S. C.

CLERK'S COPY.

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1928 9

No. 3~~6~~3 8

FEDERAL TRADE COMMISSION, PETITIONER

vs.

ALFRED KLESNER, DOING BUSINESS UNDER THE NAME "SHADE SHOP," HOOPER & KLESNER

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

PETITION FOR CERTIORARI FILED AUGUST 15, 1928
CERTIORARI GRANTED OCTOBER 22, 1928

(33672)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1928

No. 363

FEDERAL TRADE COMMISSION, PETITIONER

vs.

ALFRED KLESNER, DOING BUSINESS UNDER THE NAME "SHADE SHOP," HOOPER & KLESNER

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

INDEX

	Original	Print
Proceedings before Federal Trade Commission	1	1
Secretary's certificate (omitted in printing)	1	1
Resolution authorizing complaint	1	1
Complaint	2	1
Answer	5	4
Stipulation re certain exhibits	7	7
Order setting cause	8	7
Orders appointing examiners	9	8
Statement of evidence	10	9
Reporters' certificate	10	9
Testimony of George C. Bowie	11	10
Mrs. Susan S. Bowie	17	16
Eugene Goff	20	19
Charles J. Walker	23	22
John M. Henderson	33	33
William J. Shelton	36	37
Mrs. C. W. Lines	44	45
R. G. Hunt	47	49
Howard Etchinson	57	61
D. A. Wills	61	66
John T. Horigan	66	71
W. Stokes Sammons	98	106, 161
Luther L. Derrick	205	223
W. Stokes Sammons (recalled)	222	242

	Original	Print
Proceedings before Federal Trade Commission—Continued.		
Statement of evidence—Continued.		
Testimony of Charles A. Appleby	231	252
Russell B. King	236	258
Frank Blundon	239	261
Katherine Biggs Williamson	250	273
John Albert Marceron	261	285
C. R. Ahalt	274	299
Alfred Kleaner	277	303
Albert J. Farley	290	317
Alfred Kleaner (recalled)	295	323
Reporter's certificate	331	363
Colloquy	332	363
Commission's exhibits	334	366
Nos. 1 to 7—Receipts and bills	334	366
No. 8—Letter from Sammons to John Henderson	336	368
Nos. 9 to 29—Letterheads, bills, etc	337	368
Photographs	342-A	374
Nos. 33 to 74—Correspondence, bills, etc	343	375
Respondent's exhibits	357	389
Nos. 2 to 5—Bills, etc	357	389
No. 6—Lease	358	390
No. 7—Proceedings in Supreme Court	360	393
Clerk's certificate	360	393
Answer to rule to show cause	361	393
Affidavit of Luther L. Derrick	365	398
Order dismissing rule	366	399
Nos. 9 to 21—Letterheads, correspondence, etc	366	399
Notice of motion to reopen	371	404
Motion to take additional testimony	372	405
Affidavit of attorney for commission	372	405
Opposition of respondent to motion to reopen	374	407
Order granting motion to reopen	375	408
Notice of motion to take additional testimony	376	408
Motion to take additional testimony	376	409
Affidavit of respondent	377	409
Objections by counsel for commission to motion to take additional testimony	378	410
Order denying motion to take additional testimony	378	411
Findings as to the facts, conclusion, and order to cease and desist	379	411
Proceedings in Court of Appeals of District of Columbia	384	417
Petition for preliminary injunction	384	417
Exhibit A—Affidavit of A. W. Mehlfeld	392	426
Exhibit B—Affidavit of W. Stokes Sammons	393	427
Exhibit C—Affidavit of F. S. Whitman	396	429
Exhibit D—Affidavit of Grover M. Plew	397	431
Complaint and answer before Federal Trade Commission	399	433
Findings, conclusion, and order of Federal Trade Commission	404	439
Answer	410	445
Order to show cause	414	446
Motion to discharge rule to show cause	414	447
Order postponing motion to discharge rule	415	448
Order re-filing of answer and briefs	415	448

	Original	Print
Argument and submission	416	448
Opinion, Van Orsdel, J	416	448
Decree	419	451
Clerk's certificate (omitted in printing)	419	451
Order assigning cause for reargument	420	451
Argument and submission	421	452
Order assigning cause for reargument	422	452
Argument and submission	423	452
Opinion, Van Orsdel, J	424	453
Decree	431	457
Præcipe for transcript of record	432	457
Clerk's certificate (omitted in printing)	434	458
Order allowing certiorari	435	458

1 [Secretary's Certificate to transcript omitted in printing.]

Before Federal Trade Commission

Docket No. 696

FEDERAL TRADE COMMISSION v. ALFRED KLESNER, DOING BUSINESS UNDER THE Trade Name and Style of Shade Shop, Hooper & Klesner	Docket No. 696. Complaint in the matter of the alleged violation of section 5 of an act of Congress approved September 26, 1914

Resolution authorizing complaint

Dec. 18, 1920

Whereas the Federal Trade Commission has reason to believe that Alfred Klesner, doing business under the trade name and style of Shade Shop, Hooper & Klesner, has violated and is violating the provisions of section 5 of the Federal Trade Commission Act,

2 and it appearing to the commission that a proceeding by it in respect thereof would be to the interest of the public, therefore be it

Resolved, That the Federal Trade Commission issue and serve upon the said Alfred Klesner, doing business under the trade name and style of Shade Shop, Hooper & Klesner, its complaint, stating its charges in that respect in substantially the form hereunto annexed, and be it

Further resolved, That notice be given to the said Alfred Klesner, doing business under the trade name and style of Shade Shop, Hooper & Klesner, as required by law; that the charges of said complaint will be heard by the commission in the city of Washington, D. C., on the 18th day of February, A. D. 1921, at 10:30 o'clock in the forenoon of the said day, or as soon thereafter as the same may be reached.

Adopted by the commission

[SEAL.] (Signed) J. P. YODER,
Secretary.

Before Federal Trade Commission

[Title omitted.]

Complaint

Dec. 18, 1920

The Federal Trade Commission having reason to believe from a preliminary investigation made by it that Alfred Klesner, doing business under the trade name and style of Shade Shop, Hooper & Klesner, hereinafter referred to as respondent, has been and is now

using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled: "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in that respect on information and belief as follows:

PARAGRAPH ONE. That the respondent, Alfred Klesner, doing business under the trade name and style of Shade Shop, Hooper & Klesner, is a resident of the city of Washington, District of Columbia, with his office and principal place of business located at the southeast corner of Twelfth & H Streets NW., in said city, engaged in the business of selling wall paper and window shades throughout the District of Columbia in direct competition with other persons, firms, and corporations similarly engaged.

PARAGRAPH TWO. That W. Stokes Sammons is a resident of the city of Washington, District of Columbia, engaged since the
3 year 1907 in the business of manufacturing and selling window shades throughout said District of Columbia under the trade name and style of The Shade Shop, which he adopted in 1907 and under which he has continually carried on and conducted, and is now carrying on and conducting, his said business. That during such period he has owned and operated stores for the manufacture and sale of window shades under the name of The Shade Shop at the following locations in said city of Washington, to wit:

1907–1909, 1222 H Street NW.
1909–1910, 813 Fourteenth Street NW.
1910–1912, 724 Eleventh Street NW.
1912–1914, 819 Fifteenth Street NW.
1914–1915, corner of Twelfth and H Streets NW.
1915–date, 733 Twelfth Street NW.

and during all of such period has by advertisements placed in newspapers of general circulation throughout the District of Columbia and by letterheads, billheads, and in city and telephone directories and by signs prominently displayed upon his windows and various places of business and by other means, held himself out to the trade and general public as The Shade Shop and as such has become and is well known and established to dealers and purchasers of window shades and the general public in and throughout said District of Columbia.

PARAGRAPH THREE. That in May, 1914, the respondent, Alfred Klesner, then in partnership with one Harry Hooper, trading as Hooper & Klesner and engaged in the business of painters, paper hangers, and decorators, leased a storeroom located at the southeast corner of Twelfth and H Streets NW. in the city of Washington, District of Columbia, renting one-half of said store to the said W. Stokes Sammons, who occupied and used the same for the manufacture and sale of window shades, neither the said respondent nor

the said Hooper being then or theretofore engaged in selling window shades, and the said Sammons utilized one of the two show windows to said store to display window shades, having his trade name The Shade Shop prominently displayed thereon; that thereafter, to wit, in November, 1915, said Sammons moved his business to a storeroom located two doors south on Twelfth Street, to wit, No. 733 Twelfth Street NW., in said city of Washington, where he has ever since and is now carrying on and conducting his business under the trade name of The Shade Shop.

PARAGRAPH FOUR. That the respondent, Alfred Klesner, at the time of such removal as aforesaid, refused to permit the said Sammons to remove his sign "The Shade Shop" from the show window and premises at Twelfth and H Streets NW., in said city of Washington, and thereafter erased and removed the word "The" from said signs and proceeded to engage in the business of manufacturing and selling window shades and ever since has manufactured and sold and is now selling and offering to sell window shades to the general public under the trade name and style of Shade Shop, Hooper & Klesner, at and in that portion of the said storeroom formerly occupied by the said Sammons, trading as "The Shade Shop," and the respondent, Klesner, having dissolved his partnership with the said Hooper in the year 1919, has ever since carried on and conducted his business as aforesaid and ever since November, 1915, has left the sign
4 "Shade Shop" upon the said premises at the corner of Twelfth and H Streets NW.; has carried the sign Shade Shop on the side window of an auto truck owned and operated by him; has caused and permitted the telephone directory for the city of Washington to list his business as Shade Shop, Hooper & Klesner; and by other means has advertised and held his business out to the trade and general public as Shade Shop. That the effect of such simulation and appropriation of name has been, and is, among others

(a) To confuse the trade and general public and to cause customers and prospective customers of the said Sammons to trade and deal with the respondent in the belief that they were trading and dealing with the said Sammons.

(b) To mislead and deceive the trade and general public into the erroneous belief that The Shade Shop owned and operated by the said Sammons, at 733 Twelfth Street, NW., in the city of Washington is identical with and the same as that of Shade Shop, owned and operated by the respondent, at the southeast corner of said Twelfth & H Streets, NW.

PARAGRAPH FIVE. That within the four years last past representatives and employees of apartment houses and hotels in the city of Washington, District of Columbia, who have been instructed by their employers to go to The Shade Shop, meaning thereby the store conducted by the said Sammons and purchase window shades, have been confused by the sign Shade Shop upon the respondent's store and upon inquiring of respondent's clerks if their employers purchased window shades at this store have been told and led to be-

lieve by such clerks that they did, when in truth and in fact, such employers dealt with the said Sammons; that such statements were false and misleading and were calculated and designed to and did cause such representatives of apartments and hotels to purchase window shades from the respondent, thereby diverting such sales from the said Sammons.

Now therefore notice is hereby given you, the said Alfred Klesner, doing business under the trade name and style of Shade Shop, Hooper & Klesner, that the charges of this complaint will be heard by the Federal Trade Commission at its office in the city of Washington, D. C., on the 18th day of February, A. D., 1921, at 10.30 o'clock in the forenoon of that day or as soon thereafter as the same may be reached, at which time and place you shall have the right to appear and show cause why an order should not be entered by the Federal Trade Commission requiring you to cease and desist from the violations of laws charged in this complaint.

You will further take notice that within thirty (30) days after the service of this complaint, you are required to file with the commission an answer in conformity with Rule III of the Rules of Practice of the commission.

In witness whereof the Federal Trade Commission has caused this complaint to be issued, signed by its secretary and its official seal to be affixed hereto, at the city of Washington, D. C., on this 18th day of December, A. D., 1920.

By the commission.

[SEAL.] (Signed) J. P. YODER,
Secretary.

5 Before the Federal Trade Commission

[Title omitted.]

Answer

Filed January 18, 1921

Comes now the defendant Alfred Klesner, trading as Hooper & Klesner, and for answer to the complaint filed herein says:

1. As to the allegations of this paragraph defendant says that he admits the substance of this paragraph with exception of such allegations as might be construed to mean that the defendant is engaged in selling wall papers and window shades only, and trades under the firm name and style of Shade Shop Hooper & Klesner. Defendant trades as HOOPER & KLESNER, and is engaged in the paperhanging, painting, decorating, and window shade business, and all stationery, signs on windows, automobiles, or advertising matter having reference to the word Shade Shop, merely indicates and describes, as does paperhanging, painting, etc., describe, the kind of business conducted by said firm.

2. Answering this paragraph defendant denies that W. Stokes Sammons has continually carried on and conducted since the year 1907, a business of manufacturing and selling window shades under

the firm name and style of The Shade Shop, and says that the said Sammons not only abandoned such name but used and was connected with another firm engaged in said business. Defendant further denies that said Sammons has during said period alleged held himself out to the general public by advertisements, letterheads, city and telephone directories, as The Shade Shop, but on the contrary the said Sammons has been employed to perform similar services for other firms, so this defendant is informed and proposes to establish.

3. Defendant admits that he and one Harry Hooper, then trading as Hooper & Klesner, in the business of paperhanging, painting, decorating, and window shades, did lease at the instance of said Sammons and after he was not successful in leasing the premises himself, the premises situate at Twelfth and H Streets NW., upon and with the understanding with said Sammons that he would lease and pay one-half of the rental for use of part of said storeroom. Defendant denies that he nor the said Hooper were then or had theretofore been engaged in selling window shades, but on the contrary both the defendant and said Hooper had been engaged in selling shades since the year 1910, and the said Hooper, whose business was absorbed by the aforesaid partnership, had been engaged in the window-shade business several years prior to the year 1910, and the said firm of Hooper & Klesner had purchased of the said Sammons and had ordered him to manufacture numerous window shades when he, the said Sammons, was located at 724 Eleventh Street Northwest, for customers and trade of said Hooper & Klesner, and prior to May, 1914, when said Sammons came with the firm of Hooper & Klesner, the said firm had built up and established a
6 substantial and profitable window-shade business, and this the said Sammons well knew at the time he associated himself in the same building with the said firm, and during all the time that Sammons was so associated with the firm of Hooper & Klesner at the Twelfth and H Street address, the said Sammons continued to furnish to the said firm window shades to fill the orders and trade of the said firm, and it was not the intention of the said firm nor the understanding with said Sammons that said firm would abandon and discontinue the window-shade business by reason of his association in the same storeroom. Defendant admits that said Sammons had, as was agreed, the name The Shade Shop displayed upon the windows of said Twelfth and H Street property.

4. Defendant denies that he refused said Sammons permission to remove the sign "The Shade Shop" from the show windows at Twelfth and H Streets Northwest, and says that the true facts are that the said Sammons not only breached his lease with the said firm of Hooper & Klesner but conducted himself in a manner so unbecoming a gentleman that he was refused permission to enter upon the premises of the said firm of Hooper & Klesner, and defendant denies that he erased and removed the word "The" from said signs, but on the contrary the said Sammons, after he had vacated said premises, without their permission, knowledge, and consent, forcibly broke and entered into the said premises and erased the word "The" himself from said signs, and otherwise mutilated

the windows and floors thereof necessitating a refinishing and painting. Defendant denies that he did then proceed to engage in the business of manufacturing and selling window shades, but says that he resumed and continued the same under the firm name and style of Hooper & Klesner. Defendant denies that he has caused the telephone company to publish Shade Shop under his number in the directory, and any arrangement as to name in business which might appear in said telephone directory is that adopted and published by the telephone company, and with the exception of the last directory published there has always appeared in said directory sufficient information to apprise anyone using the directory that the one place was conducted by the same Sammons and the other by the said Hooper & Klesner. Defendant expressly denies that he has appropriated the name of The Shade Shop or has done anything with the purpose and intent of confusing the trade and general public and to cause customers and prospective customers of said Sammons to trade and deal with him in the belief that they were trading and dealing with said Sammons or to mislead or deceive the trade and general public into the erroneous belief that their place of business was the same as that of The Shape Shop.

5. Defendant says in answer to this paragraph that he has no knowledge of any representative or employee of apartment houses or hotels in this city being confused by his signs in his place of business with that of The Shade Shop, and he specifically denies on information and belief that his clerks ever advised any such person or persons that their employers had purchased and were customers of Hooper & Klesner, unless such was the case. Defendant further says that he has specifically instructed his employees in answering inquiries over the telephone or by persons calling to inform that this is Hooper & Klesners' Shade Shop and inform them that The Shade Shop was another place of business.

7 Defendant further says in answer to the whole of this complaint and this paragraph in particular that the said Sammons has not acted toward the defendant and his business with the same degree of good faith as has the defendant toward the said Sammons. That when the said Sammons left premises at Twelfth and H Streets, he opened a place of business about three doors below defendants at the address given in the complaint and there opened up and engaged in for the first time in his career a wall paper and decorating business and did there conduct said business until such time as he concluded it a futile effort to attempt to disrupt defendant's business; that the said Sammons resorted to unfair practices and methods of competition by soliciting by mail and otherwise and did quote the customers and trade of the firm of Hooper & Klesner prices for the same line of work which he the said Sammons had performed for such customers through the said firm of Hooper & Klesner at such low figures as to appear so ridiculous to said customers that some of them forwarded Sammons' proposals to them, the said Hooper & Klesner, which prices were unfair as being below

cost and were designedly made for the purposes of taking customers and trade from the said Hooper & Klesner.

Defendant further says that this complaint should not be maintained for the reason that about the time, or shortly thereafter, that said Sammons established himself at 733 Twelfth Street Northwest, he filed in the Supreme Court of the District of Columbia a bill in equity in which he made this defendant and Harry S. Hooper, trading as Hooper & Klesner, defendants, and in which he sought practically the same relief as is sought in this complaint, and after the court heard the facts his bill of complaint was dismissed and relief was denied. Defendant respectfully submits, therefore, that the facts herein have been adjudicated and that this action or complaint should not be maintained and prosecuted.

And having fully answered your defendant asks that he be dismissed with his reasonable costs.

(Signed) ALFRED KLESNER.

Before Federal Trade Commission

[Title omitted.]

Stipulation re certain exhibits

Whereas at a hearing in the above-entitled proceeding heretofore held in the city of Washington, D. C., on the 15th day of April, 1921, one W. Stokes Sammons appeared and testified as a witness at the instance of the Federal Trade Commission, and in connection
8 with his testimony identified certain photographs which were marked as Commission's Exhibits Nos. 30, 31, and 32, and introduced and received as evidence in this proceeding; and

Whereas Adrien F. Busick, acting chief counsel for the Federal Trade Commission, has caused copies of the same to be prepared and heretofore submitted to Clarence R. Ahalt, counsel for the respondent Alfred Klessner, for his examination, the said Ahalt having examined the same, and it being desirous that such copies be substituted for the originals;

Now, therefore, it is hereby stipulated and agreed by and between Clarence R. Ahalt, counsel for the respondent, and Adrien F. Busick, acting chief counsel for Federal Trade Commission, that the above-mentioned and described copies of commission's Exhibits Nos. 30, 31, and 32, initialed by the said Ahalt, shall be substituted for and in the place and stead of the originals in this proceeding, and for the purpose of this proceeding shall have the same force and effect as the originals thereof.

(Signed) C. R. AHALT,
Counsel for Respondent.

(Signed) ADRIEN F. BUSICK,
Acting Chief Counsel for Federal Trade Commission.

Dated this — day of ———, A. D. 1921.

Before Federal Trade Commission

[Title omitted.]

Order setting cause

April 5, 1921

The above-entitled proceeding being at issue upon the complaint of the commission and the answer of the respondent, it is

Ordered that the hearing of the proof of the charges of the complain in the above-entitled proceeding begin in the city of Washington, District of Columbia, on the 13th day of April, A. D. 1921, at 10.30 o'clock in the forenoon of said day.

By order of the commission.

[SEAL.] (Signed) J. P. YODER,
Secretary.

9 Before Federal Trade Commission

[Title Omitted.]

Order appointing examiner

April 5, 1921

The above-entitled proceeding being at issue and ready for the taking of testimony, it is

Hereby ordered that Edward M. Averill, an examiner for this commission, is hereby appointed and designated to receive and hear testimony and consider evidence in said proceeding.

By the commission.

[SEAL.] (Signed) J. P. YODER,
Secretary.

GRH/RMP 4-9-21.

Before Federal Trade Commission

[Title Omitted.]

Order appointing examiner

April 12, 1921

It appearing to the commission that Edward M. Averill, heretofore appointment as an examiner in the above matter, is unable to act as such, it is

Hereby ordered that Joe J. Dunham, an examiner for this commission, is hereby appointed and designated to receive and hear testimony and consider evidence in the said proceeding.

By order of the commission.

[SEAL.] (Signed) J. P. YODER,
Secretary.

10 GRH/AEW 7-16-21.

Before Federal Trade Commission

[Title omitted.]

Order appointing examiner

July 18, 1921

It appearing to the commission that Joe Dunham, heretofore appointed as an examiner in the above matter, is unable to act as such, it is.

Hereby ordered that George McCorkle, an examiner for this commission, is hereby appointed and designated to receive and hear testimony and consider evidence in the said proceeding.

By order of the commission.

[SEAL.] (Signed) J. P. YODER,
Secretary.

Before Federal Trade Commission

Docket No. 696

Statement of evidence

Before the Federal Trade Commission. Federal Trade Commission vs. Alfred Klesner, doing business under the trade name and style of Shade Shop, Hooper and Klesner. Docket No. 696. Washington, D. C. April 14, 15, 1921. Hulse & Allen, official reporters, Whitford Bldg., Washington, D. C.

Reporters' certificate

HULSE & ALLEN,
Whitford Bldg., Washington, D. C.

This is to certify that the within proceedings before the Federal Trade Commission in the case of Federal Trade Commission vs. Alfred Klesner, doing business under the trade name and style of Shade Shop, Hooper and Klesner, Docket No. 696, were had as herein appears, and that this is the original transcript thereof for the files of the commission.

HULSE & ALLEN, *Official Reporters.*

11 [Title omitted.]

WASHINGTON, D. C., *Thursday, April 14, 1921.*

The above-entitled matter came on for hearing at 10.30 o'clock a. m.

Before: Examiner J. J. Dunham.

Appearances: Mr. Gaylord R. Hawkins, appearing on behalf of the Federal Trade Commission; Mr. C. R. Ahalt, 1406 G Street NW., appearing on behalf of defendant.

Mr. HAWKINS. If it please the examiner, this is the case of the Federal Trade Commission against Alfred Klesner, Docket 696, doing business under the trade name and style of Shade Shop, Hooper and Klesner. The charges as alleged are the appropriation of the trade name of Shade Shop.

I am ready to proceed if you will have the witnesses sworn whom I have subpoenaed and who are ready to testify.

(Thereupon, all the witnesses present were sworn.)

GEORGE CALVERT BOWIE was thereupon called as a witness on behalf of the commission, and having been previously sworn, testified as follows:

Direct examination by Mr. HAWKINS:

Question. What is your business, Mr. Bowie?

Answer. I am engaged in the real estate business.

Question. With what firm are you connected?

Answer. I am associated with H. L. Rust.

Question. Where is their office?

Answer. 912 Fifteenth Street.

Question. In the city of Washington?

Answer. Yes, sir.

Question. How long have you been with them?

Answer. For the past 17 years.

Question. What are your duties with them?

Answer. I have charge of the sales and mortgages.

Question. Do you know Mr. Sammons, W. Stokes Sammons?

Answer. Yes.

Question. The gentleman sitting here?

Answer. Yes.

Question. How long have you known Mr. Sammons?

Answer. For about 10 years.

Question. During the time that you have known him, what business has he been engaged in?

Answer. He has been engaged in the business of making shades, window shades.

12 Question. Have you ever had any occasion to have any business dealings with him, at all?

Answer. Yes; our office purchases practically all the window shades for apartment houses and dwelling houses under our charge from Mr. Sammons.

Question. How long have you been purchasing, as you have said, these shades from Mr. Sammons?

Answer. For about that period of time.

Question. For about that period of time?

Answer. Yes, sir.

Question. During the period that you have spoken of in which you have been purchasing these shades, has Mr. Sammons been doing

business under his own name, or has he been doing business under any other name, trade name?

Answer. We have known him as doing business under the name of The Shade Shop.

Question. During all of that time?

Answer. Yes.

Question. Are you acquainted with Mr. Klesner, of Hooper & Klesner?

Answer. No, sir.

Question. Did you ever know of their having a store at the corner of Twelfth and H Streets?

Answer. Yes; I know that they have a store there.

Question. Did you ever have any occasion to go to their store with reference to the buying of any shades?

Answer. Yes; I went there once.

Question. When was that, Mr. Bowie?

Answer. To the best of my recollection—

Question. Just as near as you can tell.

Answer. About 18 months, or possibly two years ago.

Question. Two years ago?

Answer. Yes.

Question. Now, just tell us, Mr. Bowie, how you happened to go there and all the circumstances surrounding your going there, and why you went there, and what happened when you went there?

Answer. We wanted some shades for my own apartment, and I told Mrs. Bowie to go to the Shade Shop and get them; that is where we bought our shades. She went to what she thought was the Shade Shop and ordered some shades, and they were to be sent up to the office at a given time——

Mr. AHALT. I object to that testimony. If Mrs. Bowie is available she can testify as to what happened there; as to what was done.

Examiner DUNHAM. Just a minute, please, sir. I do not know if you are familiar with the mode of procedure with this commission. Now, our idea is this; the way we do is this. When a question is asked, if you think it is objectionable, you enter your objection as a part of the record, and then the witness is permitted to answer, and its admissibility will be passed on afterwards.

Mr. AHALT. I wish the record to show, then, that I object to Mr. Bowie testifying to any transaction that Mrs. Bowie had with the firm of Hooper & Klesner.

13 Examiner DUNHAN. Now, Mr. Witness, you can answer that question.

The WITNESS. How far did we get?

Mr. HAWKINS. Give the last question.

(Thereupon, the reporter read the last question and answer.)

By Mr. HAWKINS:

Question. That is explanatory as to why he went there, and is the only reason. Now, tell what happened after that.

Answer. The shades did not arrive at the appointed time and I went over to the Shade Shop operated by Mr. Sammons to get them.

Question. Well, now, where was that?

Answer. That was on Twelfth Street, close to the corner of H.

Question. About how close to the corner of H?

Answer. I think within one or two doors.

Question. You went to Mr. Sammons's place, The Shade Shop, and did you get the shades?

Answer. No; I told him I called for the shades that my wife had ordered——

Question. Yes; go head.

Answer. And he seemed surprised, and he said my wife had not been there and I told him that was quite remarkable, that I told her to come there and she had just phoned me that the shades that she ordered there had not arrived at home and for me to call for them.

Mr. AHALT. At this time I wish to enter the same objection to the testimony of Mr. Bowie as to what his wife told him.

The WITNESS. Sammons accounted for it in this way. He said, "Your wife probably got——"

By Mr. HAWKINS:

Question. I guess probably that would not be competent. You did not get the shades from Sammons?

Answer. No; I did go next door and got them.

Question. Afterwards, you went to Sammons to get the shades and the fact is that they were not there, is that true?

Answer. They were not there.

Question. Then what did you do?

Answer. I went to the firm of Hooper & Klesner, is it?

Question. Klesner. Now, where were they located?

Answer. They were just a few doors up to the corner of Twelfth and H.

Question. That is in Washington?

Answer. Yes.

Question. When you went there what happened?

Answer. I asked them if they had any shades ordered by Mrs. Bowie, and they said they did, and I asked them if they were ready, and they said they were. I paid for them and took them home.

Question. Now, Mr. Bowie, you told us that your firm had been buying shades for about ten years from Mr. Sammons. To what extent have you bought shades, to a large extent or a small extent; give us some idea as to that?

Answer. I could not tell you in dollars and cents. I can probably in another way.

14 Question. Can you make it a little more definite?

Answer. Our office has charge of about 35 apartment houses in the city of Washington, and for those various buildings we have to buy quite a number of shades, and we buy them of Mr. Sammons.

Question. Well, these 35 apartments that your office has charge of, are they large or small, approximately?

Answer. They vary in size. I should say they probably average about 20 apartments per building.

Question. That is the average?

Answer. Yes, that is the average.

Question. When you said apartment houses, 35 apartment houses, you meant they averaged about 20 apartments to a building?

Answer. Yes, sir.

Mr. HAWKINS. You may cross examine, Mr. Ahalt.

Cross-examination by Mr. AHALT.

Question. Mr. Bowie, during these 10 years that you speak of your firm having purchased these shades from Mr. Sammons, did the purchasing of these shades by your office come under your direction?

Answer. Not entirely so.

Question. You said, I believe, that your business was to look after loans and insurance, or something else?

Answer. I have charge of the sales and mortgage department, but I also have power of attorney to draw checks and usually it falls to my lot to sign checks in payment of all such bills.

Question. But what I am getting at was whether or not you do the purchasing of the shades and conducted the business with Mr. Sammons that you refer to?

Answer. Not entirely.

Question. Well, to what extent?

Answer. Myself, personally, well, I do, for instance, for the one building where I live, 1434 Harvard Street, which has 34 apartments in it. I buy them personally for that particular building, because I look after it personally, living there.

Question. Who usually looks after the purchase of shades in the firm for which you work?

A. Most of the other orders are given by my brother, who has immediate supervision of the rent department.

Q. Do you not know, then, as a matter of fact, whether all of the shades that have been purchased by your firm during the past 10 years that you speak of were purchased from Mr. Sammons or whether purchases have been made from other companies?

Answer. I did not say that all of them have been purchased from Mr. Sammons. I did say practically all of our shade business was done with Mr. Sammons. I give you an illustration, some particular owner might, for some reason, want the shades that go in his building furnished from a particular firm, Woodward & Lothrop, or some other house.

Question. Are you able to calculate what percentage of the business that you referred to has been turned over to Sammons?

15 Answer. When I said the majority I had in mind somewhere between 60 and 80 per cent.

Question. What is the basis of that calculation?

Answer. Percentage basis.

Question. How do you arrive at that percentage of 60 per cent if you do not do the buying yourself; how could you arrive at that calculation?

Answer. I generally sign the checks.

Question. And keep check of the purchases that way, as to what volume of business you are doing with each individual concern?

Answer. That gives me an insight into the percentage of business that we do with each firm; yes.

Question. When you sent Mrs. Bowie to purchase shades that you testified to at the Shade Shop, did you give her the number?

Answer. I can not recall definitely. I probably did say that it was on Twelfth Street near H. You will understand readily, that in a conversation happening in my household as far back as that I can not quote you verbatim the language that I used.

Question. You are not prepared to testify, then, that you did tell her the number of Mr. Sammons, or the Shade Shop?

Answer. No; I told her to go to the Shade Shop that we did business with.

Question. When you made inquiry of Mr. Sammons as to whether he had the shades ready, and then after learning that the order had not been placed there, you went to Hooper & Klesner's place of business and obtained the shades there, and what did you say to them about the confusion of places, if anything?

Answer. I did not say anything to Hooper & Klesner about it.

Question. You paid the bill and went away?

Answer. I went back into Sammons's place——

Question. You left this place——

Mr. HAWKINS. Let him answer the question.

The WITNESS. I went back into Sammons's place and told him, "Here is what happened; Mrs. Bowie has gotten into the other place by mistake, and here are the shades I have just paid for," and, incidentally, he looked at them and passed an opinion as to the quality of them, which was afterward vindicated to be correct by the way they wore.

By Mr. AHALT:

Question. Did you complain of the condition to Mr. Klesner?

Answer. No, I am not an expert on shades; I would not know the merits of them.

Question. You did not complain to him as to being misinformed as to the fact?

Answer. No, I did not go back to Klesner. I could see no good of any controversy with them over it.

Question. That is the only occasion that you had knowledge of where there had been any confusion in your office, or by you?

Answer. It is the only one that has come under my personal attention.

Mr. AHALT. That is all.

16 Redirect examination by Mr. HAWKINS.

Question. These checks that you told Mr. Ahalt that were made by your firm in payment for these shades, how were they made out; were they made to the Shade Shop or to Mr. Sammons?

Answer. The Shade Shop.

Question. I think I will ask you to tell us the conversation you had with Mr. Sammons when you went there. You started to tell it and I stopped you. On second thought, I think it would be material, as showing the confusion. You told me, in your direct examination, as I recall it, Mr. Bowie, that you went to Mr. Sammons's shop to get the shades. Now, when you went there what did you say and what did he say about it?

Answer. I asked him if the shades that my wife had ordered were ready and he said, "No, your wife has not been here." I said, "Well, that is remarkable; I told her to get the shades here and she has just phoned me that she did order them here and they have not been delivered as per promise." He said, "Well, it might be that the same thing has happened here that happened many times before, she got into the establishment of my competitor by mistake," and acting on that suggestion, I went into Klesner's.

Question. That was the reason that you went to the corner?

Answer. Yes.

Mr. HAWKINS. That is all.

Recross-examination by Mr. AHALT.

Question. There is one other question, Mr. Bowie, that I would like to ask. Will you state as briefly as you can whether Mr. Sammons has occupied the location at Twelfth and H Streets during these 10 years that you have purchased shades from him?

Answer. He has always been in the neighborhood of Twelfth and H. He is now on Thirteenth Street just above New York Avenue, to which location he moved from this Twelfth Street store right near the corner of H. At one time, he was on H Street between Twelfth and Thirteenth. That is as far back as my recollection goes.

Question. So that one of the earlier locations, or later ones, were between Twelfth and H?

Answer. Which do you mean?

Question. Twelfth——

Answer. And H Street?

Question. Yes.

Answer. He was before he went to Twelfth Street.

Question. Where else was he; do you know any other numbers?

Answer. That is as far back as my recollection goes.

Question. Do you recall him being on Fifteenth Street?

Answer. Yes; he was on Fifteenth Street.

Question. What do you know about any transactions you had with him at the time he was on Fifteenth Street—819 Fifteenth Street?

Answer. Now, that you remind me of it, I have been to that place three or four times and taken shades from the building where I lived

and left them in the morning to be recovered and called for them that afternoon and took them home. I have been to that location three or four times while he was there.

Question. Under what name was that place conducted?

17 Answer. He was doing business as The Shade Shop.

Question. Do you have any knowledge——

Answer. He was associated, or rather, he divided the store there, as I remember it, with Derrick, the paperhanger. Derrick, the paperhanger, was in that building.

Question. Did you also disperse checks in payment of his bills at that time?

Answer. Yes; I have had power of attorney on the checking account at the office for some years.

Question. Do you have any recollection as to how the checks were made out at that time?

Answer. My recollection is that whenever we paid Sammons any money the check was drawn to The Shade Shop.

Question. You do not have any recollection of ever having had drawn a check while he was on Fifteenth Street to the order of Luther L. Derrick?

Answer. Yes. Derrick was doing a paper business, papering for us.

Question. I mean as to the shade business?

Answer. No; we never paid Derrick for any shades. We paid Sammons.

Question. You don't know anything about the relations existing between Sammons and Derrick while he occupied the premises at Fifteenth Street—819 Fifteenth Street?

Answer. Not of my own personal knowledge. I have been under the impression that they divided the store.

Question. Was he on the first or second floor?

Answer. First floor back.

By Mr. HAWKINS:

Question. Who?

Answer. Sammons.

Mr. AHALT. I think that is all.

Mrs. SUSAN S. BOWIE was called as a witness on behalf of the commission and, having been first duly sworn, testified as follows:

Direct examination by Mr. HAWKINS:

Question. You are the wife of Mr. Bowie who has just testified?

Answer. Yes.

Question. You live where, Mrs. Bowie?

Answer. 1434 Harvard Street.

Question. Do you recall buying shades that your husband has testified that you went to buy some shades?

Answer. Yes, sir; very clearly.

Question. Mrs. Bowie, I wish you would tell us how you happened to buy the shades, just in your own language, tell us about the whole occurrence.

Answer. Well, I had occasion to buy these two shades, I think they were, and mentioned it to Mr. Bowie, and he said, "Well, go down to the Shade Shop and get them," so I suppose in the course of a week or so, I was ready to get them and I did not know just where the place was, so I looked it up in the telephone book and went down to this place and Twelfth and H and ordered these shades.

18 Question. Well, now, about when was it, Mrs. Bowie?

Answer. I should say about two years ago.

Question. When you got to Twelfth and H Streets, what did you find there?

Answer. I went in this corner store.

Question. Were there any signs on the store at all?

Answer. Oh, yes, a large sign right across the corner.

Question. What was there in the telephone book that caused you to go to the corner of Twelfth and H?

Answer. Well, the name of the Shade Shop.

Question. Now, when you went in what happened; what did you say?

Answer. I introduced myself as being Mrs. Bowie.

Question. Who did you talk to, do you remember?

Answer. I do not remember.

Question. Well, was it a man or woman?

Answer. It was a man.

Question. What did you say and what did they say?

Answer. I introduced myself as Mrs. Bowie and told them my husband was with Mr. Rust with whom they did business and that he had sent me in there, and then I went on to order these couple of shades and had them delivered to the office. I just said, "Deliver them to the office, please," and then gave the address. That was all there was to it.

Question. What did this man that you talked to in the store say?

Answer. He just waited on me and took the order and said he would have them there by a certain time the following day. I was anxious to get them by that time, of course, as I was having a party the day after, and then they did not come, so I phoned Mr. Bowie to please call for them.

Question. Have you ever bought any shades for your personal use from Mr. Sammons since then?

Answer. Yes. Just this fall.

Question. Were they satisfactory?

Answer. Very.

Question. Have you ever bought any shades for your apartment before that from Mr. Sammons?

Answer. No.

Question. I asked you when you went to the store what signs you saw on there, I think. I will ask you again, after you looked up the name in the telephone directory, what sign did you see on the store?

Answer. The Shade Shop.

Question. Was there anything else said by the clerk that you did business with, other than what you have told us? Was there anything said about your not being in Sammons's place?

Answer. No.

Question. Anything said about their doing business with Rust?

Answer. Well, I introduced myself and told them that—he said he knew Mr. Bowie.

Mr. HAWKINS. You may cross-examine.

Cross-examination by Mr. AHALT:

Question. What other signs did you see, Mrs. Bowie, on the place when you went there, at Twelfth and H Streets?

19 Answer. I was not particularly interested in anything else. I just went on in.

Question. Was it The Shade Shop or Shade Shop?

Answer. I really could not tell you. I think it was The Shade Shop.

Question. Did Mr. Bowie lay any stress upon the name "The Shade Shop" when he told you to go to the Shade Shop?

Answer. He just said, "Go to the Shade Shop."

Question. And you went there and saw Shade Shop and you went in?

Answer. I looked it up in the telephone book first.

Question. Did you see The Shade Shop there or Shade Shop or both?

Answer. As I say, I just looked for Shade Shop, The Shade Shop.

Question. Did you see any other name other than Shade Shop in the telephone directory when you looked?

Answer. This was the first one I came to.

Question. In the telephone directory?

Answer. Yes.

Question. You did not see the name, Hooper & Klesner over the door?

Answer. No, the name would not have meant anything to me if I had.

Question. Did you see any other signs on the building?

Answer. I did not notice any other signs on the building.

Question. Paper, or anything of that sort?

Answer. I know now they are there. I saw wall paper in that place, and things of that kind, but I just saw the name "Shade Shop."

Question. As a matter of fact, the principal thing you saw when you went inside of the building was a lot of wall paper around the place?

Answer. Yes, and many shades around.

Question. Did you see any shades?

Answer. Yes.

Question. What part of the building were they in, in the store room?

Answer. I know there were some on a table there, some standing against the wall. And then I looked at the shades and when I was waited on I looked at the different qualities, while I was making the purchase.

Question. The principal things you saw in there, though, were not shades, were they; they were wall paper, and such as that?

Answer. I can not say that that was the principal thing I saw, because I was more interested in the shades. I went to buy shades.

Question. When you looked this name up in the telephone directory was the address given in the telephone directory as being on Twelfth Street, or at Twelfth and H Streets?

Answer. I do not remember.

Question. Then it might have been given as 733 Twelfth Street, I think that is the number there, is it not?

Answer. Is that the number of the corner building?

Mr. HAWKINS. Yes.

20 The WITNESS. I think it was the corner of Twelfth and H Streets, as I remember.

Question (by Mr. AHALT). You are not sure whether it was 733, 741 Twelfth Street, or 1116?

Mr. HAWKINS. She has said it was on the corner.

The WITNESS. As I remember, it was the corner of Twelfth and H.

Question (by Mr. AHALT). It was not given as Twelfth Street?

Answer. As I remember, it was Twelfth and H.

Mr. AHALT. That is all.

Redirect examination by Mr. HAWKINS:

Question. Just one more question that I think I forgot to ask you, Mrs. Bowie. When you went down there that time, I believe you told me that you had never bought any shades from Mr. Sammons before?

Answer. No; I do not think I ever bought any.

Question. You did not know the name of W. Stokes Sammons?

Answer. No; names did not mean anything to me.

EUGENE GOFF was called as a witness on behalf of the commission, and having been previously sworn, testified as follows:

Direct examination by Mr. HAWKINS:

Question. Give your full name, residence, and business to the reporter.

Answer. Eugene Goff, 806 Seventeenth Street, NW., real estate business.

Question. How long have you been in the real estate business, here, Mr. Goff?

Answer. Twenty-two or twenty-three years.

Question. Are you acquainted with Mr. Sammons, the gentleman sitting here?

Answer. Just in a general way, that is all.

Question. Have you ever bought any shades from him?

Answer. Once.

Question. When was that?

Answer. In June, 1920; the latter part of June, 1920.

Question. I wish you would tell us the circumstances surrounding that purchase.

Answer. Sam Hecht, the upholsterer, told me to go to the Shade Shop and get them.

Question. Who is Mr. Sam Hecht?

Answer. He is an upholsterer and decorator at 816 Connecticut Avenue.

Question. Here in Washington?

Answer. Yes, sir.

Question. What was it that you say he told you?

Answer. He said to go to the Shade Shop on Twelfth and H Street, or Twelfth and H, and I went down there to get these shades, just in a general way.

Question. Did he say anything about going to Mr. Sammons?

Answer. No.

Question. What did you do, then?

Answer. I went down there and went to the Shade Shop and bought a couple of shades on the corner.

21 Question. When you went there, what did you say?

Answer. I recall it, I just ordered the shades.

Question. Who did you talk to?

Answer. I do not know who I talked to, some man there.

Question. Did you say anything about Mr. Hecht having sent you?

Answer. I do not recollect that I did, no.

Question. What sign did you see on the window?

Answer. Shade Shop, or The Shade Shop. I don't remember.

Question. Well, then, after you bought the shades, what happened; what did you do?

Answer. During the conversation I had with Sam Hecht, it developed that I had gotten in the wrong Shade Shop.

Question. When did you find out you had gotten into the wrong Shade Shop?

Answer. Two or three days later.

Question. How did you find it out?

Answer. I told him that I bought the shades, and he asked me what kind and I told him, and then I had the conversation—we have lunch every day together—I did not get the Shade Shop that he deals with. He dealt with the other Shade Shop and he told me where this other Shade Shop is, and he says, "If you have occasion to go any more, you go to this other Shade Shop and tell them I sent you, and they will give you a good price."

Question. You were dissatisfied, as I understand, then, with the prices at the corner of Twelfth and H?

Answer. Not until I went back and bought some more shades from the other place.

Question. When did you go to the other place; how long afterward?

Answer. I guess it was about a week or ten days afterward that I wanted some more shades.

Question. You say the other place was where?

Answer. It was about Twelfth Street; about two or three or four doors south of H Street.

Question. Who was operating that shop?

Answer. I do not know, sir.

Question. You do not know whether it was Sammons or not?

Answer. I do not know.

Question. What was the sign on it?

Answer. Shade Shop, or The Shade Shop. I do not know whether "The" was on it or not. I went there and told the man—I said, "before I get any shades, I want to know if you are the gentleman who does work for Sam Hecht," and he says, "I am."

Question. That was several doors south of H Street, on Twelfth?

Answer. Two or three or four doors; yes.

Question. At the time before that you went to the corner of Twelfth and H, did you ask them if they were the firm that sold shades to Sam Hecht?

Answer. I can not say positively, now, that I did, no.

Question. Well, the time you went in there at the corner of Twelfth and H Streets what was the conversation; what did you say; did you ask them if it was the Shade Shop?

Answer. You mean on the corner?

22 Question. Yes; at the time you went in there?

Answer. I do not remember that I had any conversation regarding Sam Hecht at all. I simply asked if it was the Shade Shop.

Question. You asked them that?

Answer. Yes, sir; I asked them that.

Question. What did they say about that?

Answer. They said, "Yes."

Question. They said it was. That is all.

Cross-examination by Mr. AHALT:

Question. You say you saw the name of The Shade Shop on the place?

Answer. I do not know whether it was The Shade Shop or not.

Question. When you went in there you asked if it was the Shade Shop?

Answer. Yes; I asked if it was the Shade Shop.

Question. After seeing the sign outside, you asked if it was the Shade Shop, inside?

Answer. Yes, sir.

Question. You do not know whether that name was Shade Shop, or The Shade Shop?

Answer. No.

Question. Do you remember who waited on you?

Answer. No, I do not.

Question. Was it a lady or gentleman?

Answer. It was a man.

Question. This gentleman here?

Answer. I can not say. I will not swear; I can not. All I can remember is that it was a male, that is all.

Question. You testified that Mr. Hecht did not tell you the first time he sent you there, about Mr. Sammons, or laid any stress on the fact that it was the Shade Shop or that there was any distinction between the two shops?

Answer. No.

Question. Just one more question. I do not know whether he said, Mr. Stenographer, when he went inside the store if he asked if it was "The Shade Shop" or "Shade Shop."

The WITNESS. I could not say whether it was The Shade Shop or Shade Shop.

Question. I wanted to know, Mr. Goff, whether your recollection is clear as to whether you asked particularly when you went into this place whether it was The Shade Shop or not; is your recollection clear on that point?

Answer. No, I do not think it is.

Question (by Mr. HAWKINS). What is your recollection as to what you said, Mr. Goff, when you went in there?

Answer. I simply asked if it was the Shade Shop.

Mr. AHALT. I wondered whether he laid any stress on "The" or not. He might have asked whether it was just the Shade Shop, without saying, "The" at all.

Mr. HAWKINS. The record shows what he has testified to. We will argue as to what he said.

23 CHARLES J. WALKER was called as a witness on behalf of the commission, and having been previously sworn, testified as follows:

Direct examination by Mr. HAWKINS:

Question. What is your name and business, Mr. Walker?

Answer. Charles J. Walker, 524 Thirteenth Street.

Question. What business are you engaged in, Mr. Walker?

Answer. At the present time I am a speculative builder.

Question. How long have you been in that business?

Answer. Off and on for 25 to 27 years.

Question. During all of that period have you been located in Washington?

Answer. Yes, sir.

Question. Are you acquainted with Mr. Sammons, the gentleman sitting here?

Answer. I am.

Question. How long have you known Mr. Sammons?

Answer. About 17 years.

Question. He is Mr. W. Stokes Sammons, is he not?

Answer. Yes, sir.

Question. What business is Mr. Sammons engaged in, if you know?

Answer. Shade business, manufacturer of shades.

Question. How long has he been in that business?

Answer. About that long is my recollection. His first job—the first job I gave to him was about 17 years ago.

Question. Have you had business relations with Mr. Sammons during these 17 years?

Answer. Off and on, yes; almost every year.

Question. What have those business relations been?

Answer. Buying shades, mostly, for new houses.

Question. To what extent, in a general way, have you bought shades during the last 17 years from Mr. Sammons?

Answer. I suppose I bought possibly—I do not know. It is hard to figure.

Question. Yes, I know; just approximately.

Answer. A bill would run about, average, $10 or $12 a house. I suppose I built 150 houses; about $1,500, maybe a litle more than that, because I rent a lot of houses and keep replacing the shades.

Question. Now, in dealing with Mr. Sammons, have you ever known him to operate under the name of The Shade Shop?

Answer. Yes, sir; always knew him that way.

Question. Has he been operating or doing business under that name during all the period that you have spoken of?

Answer. As far as I know, he has.

Question. What do you know about his signs on his different places of business; has he had any signs on them during this time?

Answer. Oh, yes.

Question. What have those signs been?

Answer. Well, to my recollection, he had signs, The Shade Shop, and he had his name underneath that, too, W. Stokes Sammons, I think. Now, I am not positive as to The Shade Shop. I saw the word "The," that is my recollection.

24 Question. Do you recall, Mr. Walker, the different stores where he has been located here in the District of Columbia?

Answer. The first time I became acquainted with him his place of business was on E Street, between Ninth and Tenth on the south side. It would be about 910 or 912, something like that. That was about 17 years ago. I gave him orders to furnish a house I bought to live in.

Question. Was he operating under the name of The Shade Shop then?

Answer. My recollection is that he was; yes.

Question. After he left E Street, where do you next remember that he went that you have any recollection of?

Answer. I do not know; he has moved so many times.

Question. I just want you to give your recollection on that.

Answer. I won't be positive about this. I can tell you where his place of business was.

Question. Just the ones that you remember.

Answer. At one time he was on Eleventh Street, right near F, somewhere.

Question. About when was that?

Answer. I guess that must have been about 12 years ago. Then he was at one time on H Street near Eleventh and Twelfth, I believe.

Question. Do you recall any other store?

Answer. Yes, he was on Fifteenth Street in connection with Mr. Derrick, the paper hanger, in the 800 block. I do not remember the number.

Question. Do you recall any other place?

Answer. Then he went to Twelfth and H Streets NW., and at the rear end of Hooper & Klesner's Building, that is on the Twelfth Street side. Then he moved a couple of doors from there, 733 Twelfth Street, and then he moved where he is at the present time on Thirteenth Street. I think that number is 830.

Question. Do you recall his ever being at 1222 H Street?

Answer. If he was he was not there very long. I can not recall that place. It strikes me that he was around there, too. I think he was on the south side. I can not recall it to save my neck. I recall the other places.

Question. Now, Mr. Walker, in settling your bills with Mr. Sammons for the shades that you purchased during this period of time, how did you make the checks out; did you make them to Mr. Sammons, or to The Shade Shop?

Answer. I made them out both days, to Mr. Sammons and to The Shade Shop. I got acquainted with him quite well and sometimes I made it out to W. Stokes Sammons and my books show W. Stokes Sammons, and in some places I have got it The Shade Shop.

Question. Since you have been billed for the money, how have the bills been made out; have you any bills with you?

Answer. No; I think I can find some, though. I got an old book and I find the name Shade Shop on it.

Question. Have you got any old bills he sent you, there, during these last 17 years?

Answer. Last 17 years?

25 Question. During any of this period you told us about.

Answer. I got some bills, possibly the last five or six years.

Question. In billing your account, did he bill it The Shade Shop or Sammons?

Answer. The bill was always made out, Shade Shop, or The Shade Shop, I do not know which.

Question. Have you ever seen any advertising matter of any kind of his in papers or otherwise?

Answer. Yes, sir; lots of times.

Question. How did he style himself in these advertisements?

Answer: The Shade Shop.

Question. Have the shades you purchased from him been satisfactory; your dealings?

Answer. Yes, sir.

Question. There has been no cause for complaint?

Answer. No, sir.

Cross-examination by Mr. AHALT:

Question. Mr. Walker, while they were at Twelfth and E Streets, while Mr. Sammons was at Twelfth and H Streets, did Mr. Sammons's name appear on the building or windows in any way?

Answer. I do not recollect seeing his name there, but the name, Shade Shop, or The Shade Shop was on the Twelfth Street side, and also on the H Street side.

Question. Did you see the name, Hooper & Klesner there?

Answer. Yes; I did business with them.

Question. Did you see, "wall paper and hanging"?

Answer. Yes, sir; they did work for me in that line.

Question. Was there anything to indicate there were two separate business being conducted in that store by the signs that were placed on the windows and buildings?

Answer. Well, it would be right hard to answer. It would show that—of course, there were two different kinds of business. There would be samples of shades and samples of paperhanging in the window.

Question. Is it not possible for one man to conduct all of this business?

Answer. Of course; it is possible for one man to do it.

Question. The question was whether there were on the signs or windows anything which would indicate that there were two different firms doing business, or persons, separately, as to the wall papering and the shade business?

Answer. Well, I can not answer that directly. I recollect the signs of Hooper & Klesner were out. That would not indicate any two firms were doing business. I mostly went off at Twelfth Street in the back part of the store where his tables were.

Question (by Mr. HAWKINS). You said, "his tables." Whose tables?

Answer. Mr. Sammons' tables, where he made his shades.

Question (by Mr. AHALT). Mr. Walker, I hand you a photograph and I will ask you to look at it.

Mr. HAWKINS. Let me see it, please, first, before you answer the question.

Question (by Mr. AHALT). State whether or not, so far as the advertising matter pertaining to the business of painters and
26 wall papers, and the name, Hooper & Klesner, and so forth, are correctly represented by this photograph, or do correctly represent the signs that were on the building at that time, with the possible exception of the word "Shade Shop," which appears there now, and may have been The Shade Shop at that time?

Answer. I do not recall that sign.

Question. I asked you, Mr. Walker, as to the "wall papers," "Hooper & Klesner," "painters," and such as that?

Answer. The time Mr. Sammons went into the building with him, I won't be positive, but I think so. I can not swear to it.

Question. Do you recall seeing that sign, the name, "Hooper & Klesner" there?

Answer. I won't say it was like that. I recall them having his name outside there.

Question. Were the windows paneled in that form, and having the names "Window shades"?

Answer. I think so.

Question. And The Shade Shop, and so forth.

Answer. I do not recall those names on there. I recollect "Shade Shop."

Question (by Mr. HAWKINS). What were those other names?

Answer. He has got "Window Shades, Shade Shop, Window Shades." I do not recall the name "Window Shades" on each end of the center panel there. I do recall the Shade Shop sign. I could not swear whether it was there [indicating] or not. It may be on the end.

Question (by Mr. AHALT). My question was directed at the principal signs on top of the windows that appeared on this photograph, with the name "Hooper & Klesner, Painters, Wall Papers."

Answer. You mean the time that Mr. Sammons was operating the business there?

Question. Yes.

Answer. I can not say those signs were there at that time.

Question. There was a sign of "Hooper & Klesner, Paper Hanger and Painters"?

Answer. Yes, sir; they did business for me at one time.

Question. I believe you stated that you had no recollection of having seen Mr. Sammons' name on any part of the advertising matter on the windows or on this storeroom?

Answer. I say I do not recall seeing them.

Question. You said in the early part of your testimony that you were engaged now in the business of speculative building at the present time. What other businesses have you been engaged in?

Answer. Well, I used to manufacture brick. I was in the brick business.

Question. What part of this period of 17 years?

Answer. I have been in building operations off and on for 25 years in a small way. The last seven or eight years I have been building more houses and gave up the brick business.

Question. Do you recall the time when Mr. Sammons was located at 819 Fifteenth Street, in a building with Luther L. Derrick.

Answer. Yes, sir.

Question. What floor did he occupy there?

27 Answer. At the time I had business with him, he occupied the second floor.

Question. The second floor?

Answer. Yes, sir.

Question. In what manner did you pay bills for work done by the Shade Shop while located at 819 Fifteenth Street; to whom were the checks made payable?

Answer. Well, I think they were made payable to either the Shade Shop or W. Stokes Sammons. I do not recall Mr. Derrick's name appearing on any checks.

Question. I believe, Mr. Walker, you have testified that you don't recall positively whether during the time that you have had business contracts with Mr. Sammons, manufacturing shades, whether he traded under the name of The Shade Shop, and I put emphasis on the word "The" or whether it was just "Shade Shop"?

Answer. I could not say, sir. I do not even know this very day.

Mr. HAWKINS. Please read the question, Mr. Reporter.

(The reporter read the question referred to.)

Question (by Mr. AHALT). Are you prepared to testify that you did not make checks payable to Luther L. Derrick for shades purchased from Mr. Sammons or The Shade Shop, while located at 819 Fifteenth Street?

Answer. I can testify—I do not recall making any checks.

Question. You would testify positively that you did or did not?

Answer. No. I am positive I did not, but then, again, I can not say so.

Question. Do you want to testify positively or not?

Answer. I can not positively, no.

Question. Did you ever purchase any shades from anybody else, beside Mr. Sammons during this time of 17 years that you have been building houses?

Answer. Only about half a dizen that I got down at these department stores. I never had any made by anybody else but Mr. Sammons.

Question. Mr. Walker, there are many places where window shades can be purchased, are there not?

Answer. Yes, sir.

Question. Do you regard or consider that there is any difference in the place where window shades may be purchased and a place which might be termed a Shade Shop, or a manufacturer of shades?

Mr. LAWKINS. Just a minute; I will object to that as asking for an opinion and calling for a conclusion.

Mr. AHALT. Will the stenographer read that question again?

(Thereupon, the reporter read the above question.)

Mr. HAWKINS. I say that calls for his opinion.

Mr. AHALT. I consider that the witness has already qualified as a practical builder and that the equipment of a dwelling or other property with shades is a part of the construction of the house and that he is qualified to know whether or not there is any difference in a place of business which sells window shades and one which manufactures window shades.

28 Examiner DUNHAM. The objection is entered and the witness may answer.

(Discussion off the record.)

The WITNESS. You can buy shades from the Boston House which may be better than his shades, and they might be vice versa. I do not quite catch onto what you mean.

Question (by Mr. AHALT). I mean by that question, what advantage do you consider a purchaser derives from purchasing shades from an establishment merely selling window shades or purchasing from an establishment which manufactures, or makes up shades?

Answer. The person——

Question (by Mr. HAWKINS). Do you understand the question?

Answer. The person making shades—you generally have a better assortment to pick out when they make them. When they make them they go out and measure the windows for them, and they hang them for you. Otherwise, if you go to some other place to buy them, you have got to do your own hanging and cutting them down. They have the stuff in bulk and they can roll it out to you and show you the color and quality.

Question. Then you consider that there is a distinction?

Answer. Certainly.

Question. Between a place that advertises window shades for sale and a place which might term its place, or a part of its business, as being a shade shop?

Answer. In my line of business it would be; yes, sir.

Mr. AHALT. I think that is all.

Redirect examination by Mr. HAWKINS:

Question. I think you said to Mr. Ahalt, Mr. Walker, that you had made some purchases from Hooper & Klesner; am I correct?

Answer. I said I did business with him years ago.

Question. What was the nature of that business; what did you buy from him?

Answer. He did some wall papering for me.

Question. How long ago was that?

Answer. I do not know.

Question. Well, was it a year or a month ago?

Answer. Oh, yes; it has been, I will say, six or seven years ago.

Question. Did you ever know of Mr. Klesner or Hooper & Klesner manufacturing window shades?

Answer. Personally I do not. I only know they carried on that business there. I never bought anything from them.

Question. You never bought window shades from them?

Answer. No, sir.

Question. You do not know whether they manufactured any window shades, Mr. Klesner, or Hooper & Klesner?

Answer. I only know from hearsay.

Question. I mean from what yo do know?

Answer. Yes, sir.

Question. When was it that they did?

Answer. After Mr. Sammons moved a couple of doors south of them, then they carried on the window shade business. In fact, I think they asked me to make some shades for me.

Question. That was after Sammons moved from the corner of 12th and H Street?

29 Answer. Yes, two doors south.

Question. Two doors south. Prior to that time, did you have any knowledge of their ever making window shades?

Answer. No, sir.

Question. Did they ever solicit your business for window shades prior to the time Sammons left?

Answer. No, sir.

Question. Speaking of Mr. Luther Derrick, have you any recollection of ever having made any checks payable to Mr. Derrick for window shades?

Answer. I do not.

Question. Did you ever make any checks payable to him for anything?

Answer. I do not think I have.

Question. What would you say as to your recollection as to remembering if you had ever made checks to him. Do you think you would remember if you ever had made checks to him?

Answer. I think I would, and still I am a little doubtful about it because I know Mr. Sammons and Derrick had some kind of an understanding there. What the nature of it was I really do not know. I think he took one part of the building there and I think Derrick, in one sense of the word, was financing him, or something of that kind.

Question. But the point I am getting at is the point brought out by Mr. Ahalt about your recollection as to having made checks to

Derrick. Do you have any recollection at all of ever having made checks to him?

Answer. I have not any recollection, but I won't say I did not do it.

Question. If you had made checks to him do you think you would have remembered it?

Answer. If I made out several I would. If I had been doing it right along I would.

Mr. HAWKINS. Could I see that photograph, Mr. Ahalt?

Mr. AHALT. Yes, sir.

Mr. HAWKINS. I assume you would want to have that introduced. You had better have it identified.

Mr. AHALT. I will introduce it.

Mr. HAWKINS. Mark it, "Respondent's Exhibit No. 1 for identification."

(Discussion off the record.)

Question (by Mr. HAWKINS). Now, Mr. Walker, I have here a photograph which has been marked for identification as respondent's Exhibit No. 1, and I ask you to look at that and say whether or not that is the photograph that you refer to in your testimony in answers to questions by Mr. Ahalt a few minutes ago?

Answer. Yes, sir.

Question. Now, Mr. Ahalt has just said that he did not contend that this photograph, respondent's Exhibit No. 1 for identification, showed the signs on the building as they were——

Mr. AHALT. Just a moment; I did not say on the building; on the panels of the windows.

30 Question (by Mr. HAWKINS). On the panel of the windows, as they were at the time that Mr. Sammons occupied part of the store, and I will ask you if, during the time that Mr. Sammons occupied part of this store when you were doing business with him, as you have testified to in answer to questions by Mr. Ahalt, if there was not a "The" before the "Shade Shop" in those signs on the panels of the windows—panel signs, is that what you call it, Mr. Ahalt?

Mr. AHALT. Panel sign.

The WITNESS. I would not like to swear to that. I always thought there was the word "The" there.

Question (by Mr. HAWKINS). I am just asking you whether it is your recollection—you see, as respondent's Exhibit No. 1 now is, it is, "Shade Shop." I am asking you as to what your recollection is as to whether, when Mr. Sammons was there, if it was not, "The Shade Shop?"

Mr. AHALT. He has testified three different times that he has no recollection as to whether it was or not?

Mr. HAWKINS I will ask him the fourth time.

The WITNESS. As I said before, I really do not know. I thought there always was the word "The" there, but I can not say so positively.

Question (by Mr. HAWKINS). Well, what is your best recollection, Mr. Walker?

Answer. Tell me what you want me to say.

Question. I just want to get what you think about it. I can give my own opinion but that don't count for anything.

Answer. I think the Twelfth Street window has been changed a little bit. I do not think it has ever been that on Twelfth Street.

Question. You say you think the Twelfth Street window; you mean the one to the right?

Answer. Yes.

Question. How do you think it has been changed?

Answer. My recollection is it did not have those three signs, "Window Shades, Shade Shop, and Window Shades".

Question. What is your recollection as to how much it has been changed; how was it when he was there?

Answer. He had on this end [indicating] the words "The Shade Shop," and had samples of shades all up in there [indicating] and all over there.

Question. When you say over there, you mean on the left side of the picture?

Answer. Yes, sir.

Question. That was the H Street side of the picture?

Answer. Yes, sir.

Question. As you are testifying now?

Answer. Yes, sir; right side of the picture.

Question. Now, you spoke, in your testimony to Mr. Ahalt, about you went in on the Twelfth Street side where Mr. Sammons had an entrance.

Answer. The photograph don't show it.

Question. That is not in the photograph?

Answer. It is right there [indicating].

31 Question. For the purpose of the record, where was that, as to this photograph?

Answer. Where was it?

Question. Yes, sir.

Answer. It led directly into his workshop, where he had a desk in the back.

Question. Does this photograph show it?

Answer. I would not know it, and nobody else would know because —unless they had one back in there [indicating].

Question. I am pointing now to the extreme right of the photograph.

Answer. Yes, sir.

Question. Is there where the door was?

Answer. Yes, sir; there was a hall there, I think.

Question. What did you find Sammons had when you went in there?

Answer. I found he had a workshop there where he made shades. I found his office there.

Question. Was there anybody working for him; did he have any men working for him?

Answer. He had one man there named Pat, and I know they used the telephone in between him, because his desk was about there [indicating] and the girl sat on the other side of him, and they used to shove the telephone back and forth.

Question. You told me, Mr. Walker, that your books showed that you had an account with Sammons as the Shade Shop.

Answer. I said it varied some. It had the words The Shade Shop, and some was W. Stokes Sammons.

Question. You said something about that book.

Answer. I got my book here.

Question. You got those books here?

Answer. I got a memorandum book here. [Witness produces book.]

(Discussion off the record.)

Question (by Mr. HAWKINS). Then, your books, your account books, you entered your payments that you made to Mr. Sammons as payments to the Shade Shop?

Answer. Oh, in this book—some books I have Shade Shop, and in some I have W. Stokes Sammons. The reason why I remembered this book was it was the only book I could find of 1909.

Question. You went to this store at Twelfth and H Streets, which is shown in the photograph, respondent's Exhibit No. 1, for identification, which has the sign over the door of Hooper & Klesner?

Answer. Yes, sir.

Question. And you purchased shades?

Answer. Yes, sir.

Question. When you came to pay for the shades, how did you make the checks out; did you make the checks payable to Hooper & Klesner or somebody else?

Answer. No, sir.

Question. How did you make them out; who did you make them to?

32 Answer. Either the Shade Shop or W. Stokes Sammons.

Question. Did you ever pay any money to Hooper & Klesner?

Answer. For shades; no, sir.

Mr. HAWKINS. Mr. Ahalt, this photograph of yours, marked "Respondent's Exhibit No. 1" for identification. Now, as I understand it, Mr. Ahalt, you said a few minutes ago—and I do not think the reporter got it, and I want to get it correct—that you do not contend that this photograph, respondent's Exhibit No. 1, marked for identification, is a photograph of the signs, a correct photograph of the signs as they appeared at the time that Mr. Sammons was occupying part of the storeroom; am I right in that?

Mr. AHALT. No; you have omitted one part of this, the panels. My purpose in introducing it was to show that that photograph represents the advertising matter which had been carried on the storeroom and building by Hooper & Klesner since Mr. Sammons left the premises, and it also correctly represents the advertising matter on the store and building at the time Mr. Sammons occupied the building, with the exception of those border signs appearing in the panels of the windows proper, which relate, on this photograph, to the words "Shade Shop," and "Window shades only." That is the purpose.

Mr. HAWKINS. When was this taken; have you any way of placing the date?

Mr. AHALT. Of course, I really did not expect to introduce it at this time. This photograph was taken about the time—about January or the first part of February of this year.

Mr. HAWKINS. Of this year?

Mr. AHALT. We are prepared to say that so far as the signs as now are shown on that photograph are concerned, that they are the signs which have existed on the building since the day Mr. Sammons left.

Mr. HAWKINS. I have no objection to the photograph being introduced as being a true and correct photograph of the premises as of February or January of this year. I think that is the way to get at it.

(Thereupon, the photograph referred to was received in evidence, marked "Respondent's Exhibit No. 1," and the same is forwarded herewith.)

Mr. HAWKINS. You may cross-examine.

Recross-examination by Mr. AHALT:

Question. Mr. Walker, since looking at your book there that you have had before you, is your recollection now refreshed as to the manner in which you carried on your books the accounts of Mr. Sammons, or The Shade Shop, and are you not prepared to testify as to how the entry does appear on your books during the year 1909?

Answer. The entry on my book appears as simply, Shade Shop. It might have the word "The," and it might be Shade Shop. It might be written that way in order to fill it out without writing so much; that is all.

Question. But the entries appear as Shade Shop?

Answer. Yes, sir.

Question (by Mr. HAWKINS). That was 1909?

Answer. 1909; yes, sir.

33 JOHN M. HENDERSON was called as a witness on behalf of the commission and, having been previously sworn, testified as follows:

Direct examination by Mr. HAWKINS:

Question. What is your name and address?

Answer. John M. Henderson, 3803 Keokuk Street NW.

Question. What is your business?

Answer. Speculative building and real estate.

Question. How long have you been in that business?

Answer. I have been building for more than 20 years. I have been in the real estate business 33 years.

Question. In Washington all the time?

Answer. Yes, sir.

Question. How long have you known W. Stokes Sammons?

Answer. I have known Sammons 15 years or more.

Question. Now, Mr. Henderson, have you had during these 15 years any business relations with Mr. Sammons?

Answer. Well, the best part of 15 years I have.

Question. What have your relations been?

Answer. Well, ever since I have known Mr. Sammons, and shortly thereafter, he has made window shades for me. I have been in a great many building deals and he has furnished practically the shades for the work that I have done.

Question. Approximately, how many has he furnished?

Answer. You mean how many jobs?

Question. How many shades and jobs?

Answer. Well, I could not say how many shades, but they would run—some of the jobs would run 100 shades or more. I have built as many as 20 houses at a time; 15 houses at a time; 10 houses at a time, and Sammons would furnish the shades, so I could not say how many shades nor exactly offhand how many jobs.

Question. Well, approximately?

Answer. Say 500, approximately; 500 shades and 25 jobs.

Question. What trade name did Sammons use?

Answer. Well, in looking over some old papers I find a receipt from Mr. Sammons, dated in December, 1909. It was signed "Shade Shop, per Sammons."

Question. Will you let me have the receipts?

Answer (handing receipts to Mr. Hawkins). I can say this about the Shade Shop name. I can remember my first dealings with Mr. Sammons along in 1906 and 1907, when he would want me to make out a check and would ask me to make out a check to the Shade Shop, and I remember distinctly that I would joke with him and laugh and deliberately make out the check to W. Stokes Sammons. I did that a good many times with him, just for fun, you know. I remember that distinctly. I could not give any exact dates. That was way back.

Question. That was in 1906, was it not?

Answer. 1906 and 1907. I have such checks home and in looking them over it just makes me smile as I recall the coincidence.

Question. That was in 1906 or 1907. After that how did you make your checks?

Answer. Well, with me it was just a matter of drifting into what Mr. Sammons wanted. I have a check dated October 15, 1910,
34 made out to the Shade Shop. Then I have various other checks, following year after year, all made out to the Shade Shop.

Mr. HAWKINS. I will ask you to mark these papers as Commission's Exhibits Nos. 1 to 10, inclusive, for identification.

(Thereupon, the papers referred to were marked for identification, Commission Exhibits Nos. 1 to 10, inclusive.)

Mr. HAWKINS. I now offer in evidence Commission's Exhibits Nos. 1 to 10, inclusive, the same being various receipts and letters from Mr. Sammons to Mr. Henderson, which have been produced by Mr. Henderson here this morning, and to which he has just referred in his testimony.

(The papers so offered and identified were thereupon received in evidence, marked "Commission Exhibits Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10, Witness Henderson," and the same are forwarded herewith.)

Question (by Mr. HAWKINS). Did you ever make any of these checks payable to any one besides the Shade Shop or Sammons?

Answer. Not to my own knowledge; not to my remembrance. I am positive that for every job that Mr. Sammons did for me, I made payment directly to him, because I never knew anybody else in connection with his business.

Cross-examination by Mr. AHALT:

Question. Do you recall Mr. Sammons being in business at 819 Fifteenth Street in the same building with L. L. Derrick, paperhanger, about 1915?

Answer. Yes, sir.

Question. To whom were your checks made payable while he was at 819 Fifteenth Street?

Answer. All of my checks, so far as my knowledge goes, now, were made payable to the Shade Shop.

Question. Did you ever make any check to L. L. Derrick for shades ordered?

Answer. I do not think so.

Question. Do you know of relations, if any, existing between Sammons and Derrick?

Answer. No, sir.

Question. Did Mr. Sammons ever tell you of any arrangements he had with Derrick?

Answer. No, sir.

Question. Can you testify positively that while Mr. Sammons was with Mr. Derrick, that all checks were payable to his, Sammon's order, or the Shade Shop, and that none were payable to Derrick for shades?

Answer. So far as my recollection goes, along previous to the time Mr. Sammons was in the same building with Mr. Derrick, I had been in the habit of making checks out to the Shade Shop, I might say, invariably. Now, I do not remember ever making a check out to Mr. Derrick, unless it was a final check for $35, which Mr. Derrick claimed after Mr. Sammons had left that building. Mr. Andrew Wilson, a lawyer, came to me one day with a bill demanding a balance of $35 which Derrick claimed was owed on a job which Mr. Sammons had done for me, and I told Mr. Wilson that

I did not owe Mr. Derrick in the matter in any manner, shape,
35 or form, and I would refuse to pay that bill. He said, "Mr. Sammons had turned this over to Mr. Derrick as a settlement. He has left up there and they have had a settlement and Mr. Derrick has had this claim assigned to him." I said, "Well, Mr. Wilson, the only way I will ever pay that is for you to bring into me a written assignment from Mr. Sammons to Mr. Derrick of that $35." And Mr. Wilson did come in with that assignment, and I paid that bill. Whether I gave Wilson or Derrick a check, I do not remember.

Question. Do you recall on whose billhead this bill was presented and assigned?

Answer. I do not know. I may have it amongst some old papers. I have been a fairly good hand at saving old papers, but I have been destroying my old papers during the last two months. I wanted to get rid of everything and I made up my mind to destroy everything back of 1915 and this catches me at it. I would not have had these papers two months hence [indicating].

Question. Was it the contention of Mr. Wilson that this bill was due Mr. Derrick under his arrangement with Mr. Sammons for the conduct of business at 819 Fifteenth Street, and that Sammons, having left, the bill was due him, Derrick?

Answer. Mr. Wilson did not put it in that shape. Mr. Wilson represented to me that Mr. Sammons was no longer up in Mr. Derrick's building and he was indebted to Mr. Derrick in what manner, shape, or form, I do not know, and he claimed that bill; he represented that my bill had been assigned to Mr. Derrick by Mr. Sammons. I declined most positively to pay that bill unless he brought me a written assignment, which he did. He brought me a written assignment from Mr. Sammons and Mr. Derrick.

Mr. AHALT. Did he state, Mr. Stenographer, year, or say when this bill was rendered when he first spoke of it?

(Thereupon, the reporter read the last two or three answers of the witness.)

Question (by Mr. AHALT). Do you recall the year in which this bill was incurred?

Answer. I have an idea it was a balance of $35 due on my Upton Street houses; for shading Upton Street houses; that was along about 1916 or 1917. I do not recall exactly.

Question. Do you have, or can you get, the receipt which was given you and to which you have just referred?

Answer. I will try to look it up. I will look it up and see if I have it; you mean the Derrick receipt?

Question. Yes.

Answer. I ought to have it unless it got mixed in with the other papers which I have destroyed a couple of months ago.

Question. Is it in the checks you have here?

Answer. No.

Question. Will you bring it in at 10 o'clock to-morrow in the morning?

Answer. I will try to. If I have it, I will let you have it.

Examiner DUNHAM. We will take a recess until 2 o'clock p. m.

(Thereupon, at 12.40 o'clock p. m., a recess was taken until 2 o'clock p. m.)

36 AFTER RECESS

The hearing was resumed, pursuant to the taking of recess, at 2 o'clock p. m.

Mr. HAWKINS. Mr. Shelton, will you please take the stand?

WILLIAM J. SHELTON was called as a witness in behalf of the commission and, having been first duly sworn, testified as follows:

Direct examination (by Mr. HAWKINS):

Question. Where do you live, Mr. Shelton?

Answer. 33 Quincy Place Northwest.

Question. That is in Washington?

Answer. Yes.

Question. What business are you engaged in, Mr. Shelton?

Answer. Traveling salesman at this time.

Question. Are you acquainted with Mr. W. Stokes Sammons, the gentleman sitting here at my left?

Answer. I could not say that I am acquainted with him.

Question. Do you recall the time when you had some business dealings with him, with reference to some window shades?

Answer. Yes, sir.

Question. When was that, Mr. Shelton?

Answer. I could not say the exact date, but near about, I should say, this time a year ago, just about.

Question. I want you to tell the examiner about that incident, and tell him all the circumstances surrounding it.

Answer. Well, about a year ago—in fact, a year ago in March—I bought a home up at 33 Quincy Place Northwest, in this city, and while having it repapered, I decided to have some new window shades put up; I did not know just where to go to get them, and the paperhanger said "Why don't you go down to the Shade Shop, Mr. Sammons?"

Question. Who was doing your paperhanging for you?

Answer. A fellow from McGee's, up there on Pennsylvania Avenue. He was doing the work through George L. Walker, or George P. Walker, I do not know which.

Question. McGee was the paper contractor, and one of his men was doing the work?

Answer. One of his men was papering the house.

Question. He recommended whom?

Answer. He recommended Mr. Sammons of the Shade Shop; so, if I remember correctly, he gave me the phone number. I decided

I would get bids on it, and the man that bid on it the cheapest, for the same material, I would let him have the work. So, I called up the Shade Shop, and talked to Mr. Sammons, and gave him the numbers over the phone, if I remember correctly, and he told me that he would let me know in a few days, or within a short time, what he could furnish the shades for that I wanted. I told him I wanted a cambric shade, if I remember right. So, I gave him the numbers, and in the meantime I called up two other firms and gave them the numbers over the phone, and they in turn called me and gave me their price for this shade, and if I remember right, Mr. Sammons was about $12 or $15 cheaper than they were for the same work, so I decided I would give him the job.

37 Question. You said Mr. Sammons said he would give you a bid in a day or two. Did he finally give you the bid?

Answer. He gave me the bid, yes, sir; called me up right away, or soon after that, and told me what price they were.

Question. That was all over the phone?

Answer. That was all done over the phone.

Question. How did his bid compare with the other bids you received?

Answer. His was a great deal cheaper, from $12 to $15 cheaper.

Question. Then what happened?

Answer. Of course, I decided I would let him have the contract, or the job; so I got in my machine and lit out for the Shade Shop.

Question. What happened?

Answer. I struck there at Twelfth and H Streets, on the corner. I didn't see any name—in fact, I didn't look for any name over the Shade Shop, as I had been told where the location was by this paper-hanger.

Question. Did you see a sign on the building there?

Answer. I saw a sign on the building that said "Shade Shop," and naturally I went in.

Question. When you went in there, at the corner of Twelfth and H Streets, what happened?

Answer. I asked for Mr. Sammons.

Question. Whom did you find there?

Answer. I don't know who it was at the present time, but I asked for Mr. Sammons, and they told me that he was out, so I asked what time he would be in, and whoever it was talking said he would be in later; so I said all right. I ascertained the time he would be in, and I went out and came back about the time that he was supposed to be in, and when I came back there he still was not in, but a gentleman was in the office at that time.

Question. Do you know the name of the gentleman that you talked to the second time?

Answer. No, sir; I do not.

Question. Would you know him if you saw him?

Answer. I don't know as I would recognize him. I would not say that I could. So, I said, "Well, I don't have time to be both-

ered." I was in a hurry, and I said, "If some one could wait on me, I would tell them what I wanted, pick out my color of shade, and go on about my business." So, he said he would be glad to serve me, so he got some samples and showed me at that time, and I picked out the one that I wanted, and he said, "Now, how many do you want?" I said, "Well, I gave you the order, or somebody got the order over the phone, and the sizes, and all"; and he said—if I remember correctly, he said they had been mislaid, that I would have to give them to him again, so I got a copy of them and I gave them to him, and went on about my business, and he said he would let me know when they were ready, and he called me up and told me when they were ready, and I went down and got them and paid for them, and went on about my business.

Question. When you went in the second time, did you ask for Mr. Sammons?

Answer. Yes, sir.

38 Question. What did they say to you then?

Answer. They told me he was out.

Question. They said he was out again?

Answer. They did; that he had not come in. They said he had not come in, or that he was out, or that there was no one there by that name. I forget just what was said now.

Question. They did not say to you that that was not his place of business?

Answer. No, sir.

Question. When did you find out that you had not dealt with Sammons?

Answer. I did not ascertain that until some time later, when I was going down the street near that place, or after I had left this particular shop. I noticed another one down the way, and I needed some more shades, so I stopped into this place, and that is the first time that I had realized that I had not bought where I intended to buy.

Question. Where was it that you bought the second time? You said down the street. Was it on Twelfth Street?

Answer. On Twelfth Street.

Question. With reference to the place where you went the first time, was it south or north?

Answer. It was south of that, if I remember correctly.

Question. About how many doors?

Answer. Oh, I should say—I could not say—three or four doors, we will say, something like that.

Mr. HAWKINS. Cross-examine.

Cross-examination by Mr. AHALT:

Question. What other firms did you get bids from, Mr. Shelton?

Answer. I can't just recall. I got one out northeast, and one from up on New York Avenue, if I am not mistaken.

Question. How did you get the other names?

Answer. I got them from the telephone book, and over the phone.

Question. You did not phone Hooper & Klesner's place to get bids from them?

Answer. No, sir; I did not.

Question. You did not see their name in the telephone book?

Answer. I did not look for it. I do not know as I saw it. I saw the Shade Shop.

Question. When you paid for those shades, did they give you a bill or a receipt for them?

Answer. Yes, sir.

Question. Do you have that with you?

Answer. No, sir; I have not.

Question. On whose bill-head was that bill made out?

Answer. It was made out on the firm name—I don't know just what it was. I didn't pay any attention to it.

Question. You did not see anything on that bill about the Shade Shop, did you?

Answer. I don't recall that I did, sir.

Question. Have you looked at it lately?

Answer. No, sir; I have not. I have not looked at it since I paid it.

39 Question. When you went down to Twelfth and H to place this order, you say when you came up to that corner you saw a shade shop, and you went in?

Answer. Yes, sir.

Question. You did not see any other signs on the building?

Answer. No, sir; I didn't look for any other.

Question. You just saw something there about shades, and went in?

Answer. Yes, sir.

Question. Are you sure it was shades, or was it window shades?

Answer. I would not swear that it was, but it said Shade Shop at that time, if I remember correctly. It as written right across the top of the window, "Shade Shop."

Question. Are you positive that it was "Shade Shop," or "window shades"?

Answer. I am safe in saying I am positive it was "Shade Shop."

Question. Did you see the words "window shades" on the same window?

Answer. I didn't look for any other name, or anything else.

Question. I will show you this photograph [handing paper to witness], and ask you to state whether that looks like the place that you entered to place your order?

Answer. That looks like it; yes, sir.

Mr. HAWKINS. That is respondent's Exhibit No. 1.

Mr. AHALT. Respondent's Exhibit No. 1; yes, sir.

Question (by Mr. AHALT). When you speak of seeing the name "Shade Shop," do you refer to this name "Shade Shop" on the center panel, on the right of this picture?

Answer. Yes, sir; that is what I recall seeing "Shade Shop."

Question. But you did not see "window shades" right beside it, or "window shades" here [indicating]?

Answer. I might have seen that, but, of course, I was on my way to the Shade Shop, and when I seen "Shade Shop," I went in.

Question. Did you observe this name over the door [indicating]?

Answer. No, sir; I did not.

Question. Did you observe anything on the inside in the way of wall papers?

Answer. Yes, sir; wall papers and paints—on the corner.

Question. The principal thing within sight, as a matter of fact, in that store, was a lot of wall paper piled up there?

Answer. That is right on the corner; yes, sir. I was directed from that place into the Shade Shop. I had to go out of that side door, or went through there, one or the other, into the window-shade department.

Question. That is just in one corner of this storeroom?

Answer. One side; yes, sir.

Question. How long after this first purchase was it that you observed the Shade Shop three doors below and went in and placed another order?

Answer. I did not place another order.

Question. I thought you said you needed shades and placed another order?

Answer. I went in to see about placing another order.

40 Question. How long after the purchase of the first shades, was that?

Answer. It was some time. I would not say just how long.

Question. Was it a week, or a month, or about how long?

Answer. I would say a month or six weeks, or something like that—perhaps not that long.

Question. You were in need of shades at that time, you say?

Answer. No, sir; my spring shades that I wanted—or rather fall shades—I wanted the white shades for the winter time.

Question. To whom did you talk when you went in to Twelfth and H Streets?

Answer. Which place do you mean, on the corner?

Question. Yes.

Answer. I don't know whom I talked to, sir.

Question. Was it a lady or a gentleman?

Answer. I talked to a lady one time, and to a gentleman another time.

Question. Does this gentleman here look like the gentleman you talked to [indicating]?

Answer. It looks something like him.

Mr. KLESNER (standing up). Take a good look [addressing the witness].

The WITNESS. It looks something like the gentleman I talked to. I would not say he was the man, but he looks something like the gentleman I gave the order to. I would not say that he was or was not.

Mr. HAWKINS. What is your name, sir.

Mr. AHALT. That is Mr. Klesner.

Question (by Mr. AHALT). I believe you stated that they told you that they had lost the order, or measurements.

Answer. He said he—no, he said the other fellow evidently had it, or had mislaid it, and asked me to give it to him again. He might have been under the impression, and I was under the impression at that time, that Mr. Sammons worked for them, for this shop.

Question. When you first went in there, did you ask for Mr. Sammons, or did you ask about shades?

Answer. I asked for Mr. Sammons.

Question. I will hand you this [handing paper to the witness] and ask you whether that resembles the billhead or order on which the bill was rendered you for shades at Twelfth and H Streets? Was the bill which was rendered you similar to that?

Mr. HAWKINS. Do not answer the question, Mr. Witness, until I see what you are holding in your hand.

(Mr. Ahalt hands paper to Mr. Hawkins.)

Mr. HAWKINS (after examining paper). There is no objection. You may answer.

Question (by Mr. AHALT). You may answer.

Answer. If I remember correctly, that resembles the billhead, but not the bill.

Question. Of course, this is another bill.

Answer. I mean, it was not a typewritten bill. I paid cash, and I think it was——

Question (interposing). I am speaking of the billhead proper.

41 Answer. Yes, sir; I would say that that was the billhead.

Question. You did not make any comment on the fact that you had gotten into the wrong firm at the time you paid the bill?

Answer. No, sir; I was treated nicely, and I had no comment to make.

Question. Did you ever complain to Mr. Klesner or this firm afterwards about having been misled under the circumstances that you have mentioned?

Answer. I do not believe I did. I do not think I ever said a word to them, because they had treated me nicely, and I was satisfied with the work they had done for me.

Mr. AHALT. That is all.

Mr. HAWKINS. Are you going to introduce the bill?

Mr. AHALT. I propose to introduce it later. To make the record clear now, I will state that this is a billhead of the firm of Hooper & Klesner. In order to identify it, I will state that it is dated December 7, and is actually an old bill, prepared on December 7, 1916. The charges on the bill have been practically all erased. I have erased the name, etc.

Mr. HAWKINS. The question that arose in my mind was whether you had not better have it marked for identification so as to connect it up with his testimony.

Mr. AHALT. For the purpose of getting it in the record properly, and referring to it later, we may have it marked as Respondent's Exhibit No. 2. I offer it in evidence.

(The paper referred to was received in evidence, marked "Respondent's Exhibit No. 2," and the same is forwarded herewith.)

Redirect examination by Mr. HAWKINS:

Question. Mr. Shelton, respondent's Exhibit No. 2, which I hold in my hand, is the billhead or paper that you have referred to in your testimony in answer to the questions of Mr. Ahalt just a few moments ago, it is not?

Answer. Yes, sir.

Mr. AHALT. I would like to ask Mr. Shelton one other question before he leaves.

Recross-examination by Mr. AHALT:

Question. Mr. Shelton, do you consider that you have suffered any loss, or have been deceived in any way by this particular transaction which you have referred to as occurring at Twelfth and H Streets?

Answer. That I could not say.

Question. You stated that work was satisfactory, I believe?

Answer. I meant that the work was satisfactory at the time, and that the courtesy that had been extended to me as a customer of the place was satisfactory; whether the shades are going to hold up, or not, I do not know.

Question (by Mr. HAWKINS). Mr. Ahalt asked you if you considered that you had been deceived in any way. What do you say to that?

Answer. The question was whether I had been deceived. I had actually been deceived, because I was not headed for that place at all.

Mr. HAWKINS. That is all.

42 Question (by Mr. AHALT). Do you consider it as a matter of intention on the part of those who waited on you, Mr. Shelton, to deceive you?

Mr. HAWKINS. I think I will object to that.

Mr. AHALT. I think that has some bearing on the case.

Mr. HAWKINS. The facts will speak for themselves, as to what happened. He has testified to the facts. The ultimate fact will be a question to be determined by the commission. I therefore object to it.

Mr. AHALT. I would like to have him answer the question and have the answer go into the record. What is the answer, Mr. Shelton?

The WITNESS. Shall I answer?

Mr. AHALT. I understood the examiner to announce this morning that all objections as to the admissibility of testimony and the relevancy of testimony would, according to the procedure and the practice in these proceedings, appear of record to be passed upon by the commission.

Examiner DUNHAM. What was the question, please? I really admit I did not hear it.

(The question referred to was read by the reporter, as follows:)

"Question (by Mr. AHALT). Do you consider it as a matter of intention on the part of those who waited on you, Mr. Shelton, to deceive you?"

Examiner DUNHAM. You object to it?

Mr. HAWKINS. I object to it. As I understand the practice, of course, it is to have the objections noted; but the examiner is authorized to rule out anything that shows clearly on the face of it that it is improper and irrelevant, and not encumber the record with it. I say this man has testified as to what occurred, what this respondent told him in his place of business there, and I submit it is not proper for him to go on and give his opinion as to what he thought their intention was. I submit that is improper and irrelevant. That is an ultimate fact for the commission to decide, and it has no place in the record. The examiner ought not to require him to answer or permit it to go into the record at all.

Examiner DUNHAM. To be very candid with you, I am impressed with the fact that that is improper testimony for the witness to pass on the relevancy of his own testimony; but, under our mode of procedure, Mr. Witness, each side is permitted to conduct its case and submit such proof as it sees fit to. The objections will be noted. You will please answer, and its relevancy will be passed on afterwards.

The WITNESS. Give me the question again, sir.

(The question was read by the reporter, as above recorded.)

The WITNESS. No; I don't.

Question (by Mr. HAWKINS). What do you consider was their intention in telling you that Mr. Sammons was out and would come in later? Would you consider that——

Answer (interposing). Well, they knowing that Mr. Sammons was not associated with the place, I would consider it an act of trying to deceive the customers.

Question. Then, when you came back the second time and they told you that Mr. Sammons was not there and did not tell you
43 that the store was located three or four doors south, what do you consider that? Do you consider that they had intended to deceive you or do you consider that they did not intend to deceive you?

Answer. I consider that if they knew that to be a fact, that they did intend to deceive me.

Question. Now, then, when you told them that you had already given them the measurements for these shades, or the numbers, and they told you that the other man had them, or had mislaid them, inasmuch as you had given that to Mr. Sammons over the phone, do you consider that they were trying to deceive you when they told you that?

Answer. I do.

Mr. HAWKINS. That is all.

Question (by Mr. AHALT). Mr. Shelton, you qualified one of your answers there by saying, "If they knew that to be a fact;" that is, if they knew that Mr. Sammons was not there, but was two doors below, when they made that statement to you, that you would consider that they attempted to deceive you?

Answer. Yes, sir.

Question. Do you wish to qualify your other answers as to the same matter in that particular? In other words, would it not be possible for them to have misunderstood your inquiry and to have told you what they did in perfectly good faith?

Answer. I would answer that on an explanation—or are you asking really for my personal opinion?

Question. I am asking, first, whether you would qualify your other answers in the same way you would qualify the second answer?

Answer. No.

Mr. HAWKINS. I will object to the question on the same grounds as I objected before. Of course, this is going to lead us into a situation where we will be letting the witness give his opinion as to what the evidence shows. He is not competent to do that. Read the question now. I simply want to have the record show my objections to this. My objection was overruled. While I consider my questions improper, in the light of the ruling they are proper. Read the last question, please, Mr. Reporter.

(The reporter read the question referred to, as follows:)

"Question. Do you wish to qualify your other answers as to the same matter in that particular? In other words, would it not be possible for them to have misunderstood your inquiry and to have told you what they did in perfectly good faith?"

Question (by Mr. HAWKINS). Will you answer that?

Answer. No; I did answer it. I said "no."

Question (by Mr. AHALT). What do you mean by "no"? I do not see that the answer "no" carries very much explanation with it. What do you mean by "no," Mr. Shelton?

Answer. You asked me if I wished to qualify my other answers by saying so-and-so, and I said no. As to the latter part of that question, referring to whether——

Question (interposing). It was possible for them to have misunderstood you?

Answer. It might have been possible for them to have misunderstood me, that is true.

Mr. AHALT. That is all.

44 Question. (by Mr. HAWKINS). Now, Mr. Shelton, you told Mr. Ahalt just now that you qualified your answers by saying if they knew that Mr. Sammons was doing business three or four doors away from that, they had intended to deceive you. Do you consider that a man who is operating a store at the corner of

Twelfth and H Streets, in the city of Washington, and who has operated that store for a period of over three or four years, selling window shades, wall paper, and doing painting and decorating, having a sign on his window, "Shade Shop," as a business man, being in the shade business, would know, as a matter of common knowledge, what any business man or any dealer in shades would know, that three or four doors south of him there was another man engaged in the business of selling window shades, a competitor of his, doing business under the name of "The Shade Shop," with the sign "The Shade Shop" on his window and over his store? What would you consider about that?

Answer. I would consider that that was trying to deceive.

Question. Would you consider that the first man would probably know that?

Answer. I certainly would.

Question. Would I be correct in saying that you consider that Hooper & Klesner knew, when you went in there, that Mr. Sammons was doing business about three or four doors south of them, on Twelfth Street?

Mr. AHALT. I object to that question on the ground that it has not yet been testified that either Mr. Hooper or Mr. Klesner took this order or made any such representation.

Examiner DUNHAM. The objection is in. You may answer, please, sir.

The WITNESS. What was that question again?

Mr. HAWKINS. Read the question again, Mr. Reporter.

(The question referred to was read by the reporter, as above recorded.)

Mr. HAWKINS. There has been an objection. Now, you may answer.

The WITNESS. I do not thoroughly understand the question.

Examiner DUNHAM. Read it again, please.

The WITNESS. Read that again for me, please.

(The reporter then read the question referred to.)

The WITNESS. Yes, sir.

Question (by Mr. HAWKINS). Would you consider that the employees of Mr. Klesner, the people that were working there in the store on the corner, knew it?

Answer. Yes, sir.

Question. Now, Mr. Shelton, if when you went in there and asked for Mr. Sammons, they had told you that that was not Mr. Sammons's store, but that his store was three or four doors south, would you have gone to Mr. Sammons's store, or would you have stayed and purchased from them?

Mr. AHALT. That is a matter of speculation, as to what he would have done.

Mr. HAWKINS. All his testimony is here. You opened it up. I objected to it. I do not think any of it is competent.

Examiner DUNHAM. Do you object to it?

45 Mr. AHALT. I objected to it, as a matter of speculation, as to what he would have done under different circumstances.

Examiner DUNHAM. Now that the objection is in, you may answer.

The WITNESS. Yes; I would have gone on down to Mr. Sammons's store.

Mr. HAWKINS. That is all.

(Witness excused.)

Mrs. C. W. LINES was called as a witness in behalf of the commission and, having been first duly sworn, testified as follows:

Direct examination by Mr. HAWKINS:

Question. Where do you live, Mrs. Lines?

Answer. Well, the shades were bought——

Question. I asked you where you lived.

Answer. I live at 1009 Rhode Island Avenue.

Question. How long have you lived here in Washington?

Answer. I have been in Washington five years this fall.

Question. What business is your husband in, Mrs. Lines?

Answer. He is in the cleaning and pressing business.

Question. Where is your husband's place of business located?

Answer. 1535 M Street.

Question. Have you ever bought any shades from Mr. Sammons, the gentleman sitting at my left here?

Answer. My husband ordered them; I didn't order them, but he ordered them from him.

Question. Where were they ordered for, the house or the store?

Mr. AHALT. I object to this witness testifying. She did not order them, and I object to her testifying as to where they were ordered for, or anything about it.

Mr. HAWKINS. I propose to show that they got the shades from Sammons.

Examiner DUNHAM. The objection is in, Mrs. Lines. You may answer.

The Witness. The first shades were bought from Mrs. Sammons, by my husband.

Question (by Mr. HAWKINS). Where were they placed in the house?

Answer. In the apartment.

Question. In your apartment?

Answer. Yes, sir.

Question. When was that, Mrs. Lines?

Answer. It was about, I should say, four years ago last March.

Question. Four years ago last March?

Answer. Last March.

Question. Did you have occasion, after that, to buy some shades?

Answer. Yes, sir.

Question. About when was that, Mrs. Lines?

Answer. It was a year ago, the first of last February.

Question. Did you buy the shades yourself?

Answer. Yes, sir.

46 Question. Now, I wish you would tell the examiner where you got the shades, where you started to go to buy them, and where you got them.

Answer. Well, my husband said I should go to the Shade Shop, on Twelfth Street near H. I was not familiar with that part of town, and when I went down I meant to go to the Shade Shop, but I saw the sign up there, and I didn't think there was any other place there that they sold the shades, and when I saw the sign "Shade Shop," I went in, thinking all the time I was in The Shade Shop.

Question. When you saw the sign "The Shade Shop," which place do you mean, Mr. Sammons's or Mr. Kresner's?

Answer. Mr. Sammons's.

Question. When you got down to Thirteen and H, you said you saw the sign. What was the sign?

Answer. "The Shade Shop." I didn't look for any name and didn't see any other name.

Question. So you went in there?

Answer. Yes, sir.

Question. Then what happened?

Answer. Well, there was a lady and a gentleman in front of the store talking, and I passed them, and there was a gentleman standing about middleway of the store, and I went in and told him I wished to get shades, and he asked me what kind, and I selected the shades I wanted and told him how I wanted them put, and they were to come over and take measurements for the shades and fill the order.

Question. Did they come and measure them?

Answer. Yes.

Question. Did they deliver the shades?

Answer. They came and hung the shades.

Question. When did you find out that you had not got the shades from Mr. Sammons?

Answer. When we received the bill.

Question. Whom was the bill from? Was it from Mr. Sammons or Hooper & Klesner?

Answer. Hooper & Klesner.

Question. That was the first you knew that you had not been in the right place?

Answer. Yes, sir.

Question. Have you ever bought any shades from Mr. Sammons since then?

Answer. No, sir.

Mr. HAWKINS. Cross-examine.

Cross-examination by Mr. AHAPT.

Question. Did they give you an estimate, a written estimate, after measuring the windows, Mrs. Lines?

Answer. I can not say that they did.

Question. Can you say that they did not?

Answer. Why, no. When we knew the price of the shades, what they would come to, was when the bill came. We did not ask them the price of the shades whatever.

Question. Did you leave a deposit on them?

Answer. No, sir.

47 Question. You are sure of that?

Answer. Yes; I am sure of it.

Question. I believe you said something about them giving you an estimate on them, in your testimony a minute ago?

Answer. You are mistaken. I do not think I did.

Question. When they came there and made the measurements?

Answer. No, they did not.

Question. What did you do when you found the bill, or received the bill from Hooper & Klesner, instead of from The Shade Shop?

Answer. We just went on and paid it. We were satisfied with the work, and we didn't bother, or make any complaint. We went on and paid it. I just knew I had made a mistake and went in the wrong store.

Question. You never complained to Hooper & Klesner about it?

Answer. No.

Question. I believe you said your husband told you to go to The Shade Shop on Twelfth Street near H?

Answer. Yes.

Question. When you got down to Twelfth and H Streets, you saw the words "Shade Shop," or did you see "Window Shades"?

Answer. I saw the words "Shade Shop."

Question. Did you see the words "Window Shades"?

Answer. I don't remember that I did.

Question. Did you see the name Hooper & Klesner over the door?

Answer. No; I was not looking for any name; only "Shade Shop" was what I was looking for, and that is where I went in. When I came to the place that had the Shade Shop sign on it I went in.

Question. Do I understand you to testify that the words "The Shade Shop" were on this place when you went in, on the window?

Answer. Yes, sir.

Question. You are positive of that?

Answer. Yes, sir.

Mr. AHALT. That is all.

Mr. HAWKINS. That is all.

(Witness excused.)

Mr. HAWKINS. Mr. Hunt, will you take the stand?

R. G. HUNT was called as a witness in behalf of the commission and, having been first duly sworn, testified as follows:

Direct examination by Mr. HAWKINS:

Question. Where do you live, Mr. Hunt?

Answer. At 1731 Twentieth Street.

Question. That is in Washington, D. C.?

Answer. Washington, D. C.

Question. What is your business?

Answer. I am the district manager of the Chesapeake & Potomac Telephone Co.

Question. You are here in response to a subpœna that the commission sent. Mr. Hunt, I have here in my hand what purports to be a telephone directory, the fall issue of 1920, Washington and vicinity, of the Chesapeake and Potomac Telephone Co. I would like to ask you to look at that and see if that is one of the directories of your company?

48 Answer. Yes, sir; I identify this as one of our directories.

Question. Your company publishes these directories and distributes them to your subscribers, does it not?

Answer. Yes, sir.

Mr. HAWKINS. I offer in evidence page 175 of this directory.

(The paper referred to was received in evidence, marked "Commission's Exhibit No. 11," and the same is forwarded herewith.)

Question (by Mr. HAWKINS). Turning to the page that I have marked here, Mr. Hunt, it is a page that I have taken out of that directory, is it not, Mr. Hunt?

Answer. It is, Mr. Hawkins.

Question. You will find there listed "Shade Shop," will you not?

Answer. Yes, sir; I find it listed twice.

Question. What is the telephone number of the first listing there?

Answer. The telephone number is Main 4763, Shade Shop, 741 Twelfth Street NW.

Question. Mr. Hunt, have you the contract for Main 4763 with you?

Answer. Yes, sir; I have.

Question. Does that contract show who is the subscriber for Main 4763?

Answer. Yes, it does, Mr. Hawkins.

Question. Who is the subscriber for Main 4763?

Answer. The subscriber as disclosed by that contract is the apparent partnership of Hooper & Klesner.

Question. What listings do your subscribers get from you in your directories? As I understand it, you have what is known as a main listing and free sublisting. Will you explain that, please?

Answer. In connection with individual line listings, we allow main listings and then two free extra listings of members of the firm or persons associated in business. For extra listings above that number, we charge a rate of 25 cents per month.

Question. Now, is this Shade Shop which is listed there in Commission's Exhibit No. 11 under Main 4763 a main listing, or a sublisting?

Answer. If you will let me see the contract—I hastily gathered my things up here and I want to be perfectly certain about it. Your question was whether it was a main listing or a sublisting?

Question. Main 4763.

Answer. It was a subsequently arranged for listing, not at the time the original contract was signed.

Question (by Mr. AHALT). Do you mean the number itself?

Answer. No; the listing of Shade Shop. You see, originally—I find the listing was Hooper & Klesner. May I develop this?

Mr. Hawkins. Yes. Give us the date when it was originally taken out.

The WITNESS. As far back as I can go on this contract of Hooper & Klesner, it went to June 1, 1915. That was apparently a supersedure on an individual message business service of the same sort, possibly through a change of the number of calls, or something of that sort. At any rate, the supersedure does not disclose that there was any other listing in connection with the superseded contract. Is that clear?

49 Mr. HAWKINS. It is to me.

The WITNESS. Now, I find that here we have this original contract, as far back as I can go.

Question (by Mr. HAWKINS). That is as far as your records go?

Answer. With the one listing of Hooper & Klesner.

Question. That is under date of what?

Answer. That dates to June 12, 1915.

Question. Hooper & Klesner; how were they listed under your contract, originally?

Answer. Hooper & Klesner, southeast corner of Twelfth and H Streets, NW.

Question. Did they have any special listing?

Answer. That is not disclosed from this, Mr. Hawkins. According to the way this order is written, there should have been no special listing at all, not window shades, or wall paper, or decorating, or anything like that—just Hooper & Klesner. If I had a directory of that date—and it may be there—we could find out about that.

Question. In 1915?

Answer. 1915.

Question. I have not got that. Now, have you got there——

Answer (interposing). One moment, please.

Question. Yes; I want to get this in chronological order, if I can.

Answer. Now, may I go on and tell the details? May I tell the history of this?

Question. Tell the history of this listing, if you will.

Answer. The next development that I see from our records was that under date of January 3, 1916, we arranged for an extra listing in connection with the telephone Main 4763, of Shade Shop, with the

sublisting following that, Hooper & Klesner, southeast corner of Twelfth and H Streets, NW.

Question. Now, that was on January 3, 1916?

Answer. That was January 3, 1916.

Question. Now, you state that you arranged that. How did you come to arrange it? Did anybody request it?

Answer. That is not disclosed. That was apparently arranged by a card, which is not attached hereto. May I show it to you?

Question. Yes.

Answer. There is the original record [indicating]. Sometimes the subscribers will request those things in letters, and the subscriber's letter requesting that becomes mislaid, or lost in those old contracts.

Question. I understand that that was what was known as a request, a subscriber's request?

Answer. Yes, sir; which he had a perfect right to do.

Question. Certainly. The point is that on January 3, 1916, at the request of the subscriber, the listing "Shade Shop" was entered. Is that correct?

Answer. Yes, sir; I will answer to the best of my knowledge and belief that is so.

Mr. AHALT. I object to that question and answer on the ground that there is nothing, as the witness has already testified, on the record here, or on his record, to show that there was a request on the part of Hooper & Klesner for such listing.

50 Examiner DUNHAM. You move to strike that answer out?

Mr. AHALT. Yes. There is nothing in his record, as he has previously testified, that shows that there was a request; but he says that this would indicate merely that the telephone company had made such a change at somebody's request. We do not know who made that request.

Question (by Mr. HAWKINS). What is the paper that I hold in my hand?

Answer. That paper, Mr. Hawkins, is an original order that we make up.

Question. At whose request was that order made?

Answer. I can not say, sir; I do not know. It is not disclosed.

Question. Could you say whether that was made in your office?

Answer. It was.

Question. I mean, at the instance of the telephone company, or at the instance of the subscriber?

Answer. Shall I answer that?

Question. Yes.

Mr. AHALT. Same objection to that question.

The WITNESS. Shall I go on?

Mr. HAWKINS. Yes; go ahead.

The WITNESS. I can only give you my opinion. My opinion is unqualifiedly that it was requested by the subscriber, or some one interested, based upon my long observation.

Question (by Mr. HAWKINS). So as manager of the company, in your opinion the listing of "Shade Shop" was not done at the instance of your company?

Answer. It is my opinion, yes, sir, that it was not done at the instance of the company.

Question. Now, how long did that sublisting of "Shade Shop" continue? Does it continue now?

Answer. It is continuing now.

Question. Have you had any requests from Mr. Klesner to change his listing in any manner for the forthcoming book, the next book?

Answer. I find that under date of March 14 another order was issued covering change of sublisting.

Question. That was for Main 4763?

Answer. For Main 4763; whereas formerly we had listed Hooper & Klesner, painters, that sublisting got in here somehow "Painters." We changed that. An order was issued to change that to "Hooper & Klesner, Decorators, 929 H Street, Northwest."

Question. At whose request was that change made?

Answer. I don't know.

Question. Would you say, from your knowledge of the books and the papers in connection with it——

Answer (interposing). I can add to that by saying that this order indicates that a letter was received. We received a letter, presumably from one of the interested parties.

Question. Your records indicate that you received a letter from Klesner?

Answer. Yes, sir; but the records are old, and they have been stored away for some time, and that letter has also apparently become mislaid.

Question. Now, then, as I understand it, the next issue of your directory has gone to press. Is that correct?

51 Answer. That is correct.

Question. So that under your testimony here Mr. Klesner will have two listings in the next one?

Answer. Yes, sir.

Question. He will be listed as Hooper & Klesner, decorators, instead of painters?

Answer. Yes, sir; according to the order, that is the way that should appear. Just a moment; let me be sure. Is that what I said?

Mr. AHALT. That is correct, according to that order.

The WITNESS. Decorators instead of painters, is the way it is arranged.

Question (by Mr. HAWKINS). And they will also be listed as "Shade Shop"?

Answer. "Shade Shop"; yes, sir.

Question. Similar to the listing in commission's Exhibit No. 11?

Answer. Yes, sir; just about the same way. They have changed their address from those days. There was a move order.

Question. He has moved from Twelfth and H Streets?

Answer. Yes.

Question. Now, in commission's Exhibit No. 11, which you have before you, Mr. Hunt, the second Shade Shop listed there is what number?

Answer. The second listing of "Shade Shop" reads: "Shade Shop, 830 13th Street, Northwest, Main 4874."

Question. Now, will you give us the history of Main 4874 listing, from your records?

Answer. Yes, sir; I find that under date of June 5, 1915, service was established for one W. Stokes Sammons, at the address Twelfth and H Streets, NW., the main listing to be "W. Stokes Sammons," "The Shade Shop" as a sublisting, "window shades, 12th and H Streets, Northwest." At the same time, an extra listing was arranged for which read "The Shade Shop, Window Shades, W. Stokes Sammons, 12th and H Streets, Northwest."

Question. Do you find that Mr. Sammons made any request to have his listing changed in any way?

Answer. Just a moment, Mr. Hawkins. I will see what I find on that. I think I have all the pertinent papers here. [Examining papers.] I find that under date of December 29, 1915, an extra listing was arranged for in connection with Main 4874, which read "The Decorative Shop," J. C. Mann, Manager.

Question. Now, I don't care anything about that, as that is not connected with it. That is another man who is doing business, and he got into the book. That does not enter into it. There are several of those others. Just go over those. You have one more from Sammons.

Answer. The last change, in this connection, was to change the listing from Shade Shop to The Shade Shop.

Question (by Mr. AHALT). What is the date of that? I did not get that.

Answer. That, Mr. Ahalt, was February 25, 1921.

Question (by Mr. HAWKINS). Do your records show where that request came from?

52 Answer. That indicated that that came upon a memorandum from our division manager. That ought to be here, but it is not.

Question. Have you anything to show whether Mr. Sammons requested that the The be inserted in the next book?

Answer. I have nothing that definitely shows that Mr. Sammons did that, directly answering your question.

Question. Would you say, from your knowledge as to the way business is conducted, what your opinion is as to whether that is the way it came about?

Answer. My opinion is, Mr. Sammons asked for it.

Question. He very probably would?

Answer. That is based on the fact that he had asked me for it.

Question. Did Mr. Sammons ever ask you to do it?

Answer. Yes, sir. I can develop that a little bit, if you like.

Question. Yes. I just want to know the facts.

Answer. In recasting this directory along the present lines that you see now—you have now a distinct departure from past directories that we have gotten out. There are three columns to this directory. We are following, or have followed in that directory, and will in subsequent directories, a plan which has been followed in other large cities of the country, such as New York, Philadelphia, etc., eliminating a lot of what we considered nonessentials. For example, my own company has always considered it very important to use the article "The," as, for example, "The Chesapeake & Potomac Telephone Company." We have discontinued all that sort of thing. In line with that, therefore, we discontinued the article "The" in connection with Mr. Sammons's shade shop.

Question. That is the reason that in commission's Exhibit 11 there is no "The" there?

Answer. That is the reason.

Question. That accounts for his request of February last to have the "The" inserted?

Answer. That is the reason.

Question. Now, I have here what purports to be one of your telephone directories for June 16, 1919. Is that one of yours? [Handing book to the witness.]

Answer. Yes, sir; that is one of ours.

Question. I now turn to this telephone directory and take this page from it and ask you if that is page 253 from that directory. [Handing paper to the witness.]

Answer. Yes, sir.

Mr. HAWKINS. I offer that as complainant's Exhibit No. 12.

(The paper referred to was received in evidence, marked "Commission's Exhibit No. 12, Witness Hunt," and the same is forwarded herewith.)

Question (by Mr. HAWKINS). Is commission's Exhibit No. 12, which I hand you, a page from that directory—your directory of June 16, 1919—which I have just taken out?

Answer. Yes, sir; I so identify it.

Question. I now hand you what purports to be a telephone directory of your company for Washington and vicinity, under date of April 15, 1920, and ask you if that is the official directory of your company of that date? [Handing book to the witness.]

Answer. I so identify it; yes.

53 Mr. HAWKINS. I offer in evidence page 261 from that directory.

(The paper referred to was received in evidence, marked "Commission's Exhibit No. 13, Witness Hunt," and the same is forwarded herewith.)

Question (by Mr. HAWKINS). Exhibit No. 13, which you hold in your hand now, is a page from that directory which I have just taken out, is it not?

Answer. Yes.

Mr. HAWKINS. You may cross-examine.

Cross-examination by Mr. AHALT:

Question. Mr. Hunt, in making up this fall issue of the 1920 directory, referring to commission's Exhibit No. 11, there appears the name "Shade Shop," both under numbers Main 4763 and Main 4874, I believe. Is that correct?

Answer. Yes, sir.

Question. On commission's Exhibit No. 12 I observe that under that listing the name is "Shade Shop, Hooper & Klesner, Main 4763"; and "Shade Shop, The, S. S. Sammons, window shades, 733 12th street, Northwest." Will you explain why the name Hooper & Klesner was dropped from the listing shown on Exhibit 12, and omitted on Exhibit 11?

Answer. Yes, sir. I practically covered that ground a minute ago, Mr. Ahalt.

Question. You only referred at that time to Mr. Sammons.

Answer. In line with the policy which we undertook to follow, in order to bring our book to a degree of uniformity with that of the other large cities, we undertook to eliminate a lot of matter which, according to the best of our observation, was nonessential and space consuming. In line with that we discontinued the article "The," and we discontinued numerous sublistings. That is the answer.

Question. Then, under that policy, the name of Hooper & Klesner, following the words "Shade Shop," as shown on the listing in commission's Exhibit No. 11, was dropped by the company rather than at any request of Mr. Klesner, or the firm of Hooper & Klesner.

Answer. Yes. May I develop that a little bit further?

Question. Yes.

Answer. That practice was very generally followed, Mr. Ahalt. We discontinued sublistings in connection, I should say, with hundreds of listings.

Question. Now, all the order that you have, as you have previously referred to, for any listing, as the same may pertain to "Shade Shop," is contained in the part of your record which I now show you [handing paper to witness]. Is that correct?

Answer. Your question again, Mr. Ahalt?

Mr. AHALT. Read the question, please.

(The reporter read the last question, as above recorded.)

The WITNESS. No; that would not be quite accurate, Mr. Ahalt.

Question (by Mr. AHALT). If that is not correct, will you indicate on your record, which you have, any order or record of a listing of "Shade Shop, Hooper & Klesner"?

Answer. That is different. You did not say that. You said "Shade Shop"; so, in order to be absolutely accurate, I had to recall that there were a great many orders issued in connection
54 with "Shade Shop" for the other fellow. I will answer your question if you will say in connection with Main 4763.

Question. Yes.

Answer. Yes, sir; this is all the order, so far as I can find out.

Question. And any change or diversion in the listing that has occurred up to this time and subsequent to this order, which bears date of January 3, 1916, has occurred at the instance of the company?

Answer. Yes, sir.

Question. And not at the request or instance of Mr. Klesner, or the firm of Hooper & Klesner?

Mr. HAWKINS. Will you read that question again, please?

(The reporter read the last question, as above recorded.)

The WITNESS. No, sir; to that.

Mr. HAWKINS. Now, you want to change you answer, don't you?

The WITNESS. Yes.

Mr. HAWKINS. You first said, "yes."

The WITNESS. I answered "yes." That was put as another question. I answered that question.

Mr. AHALT. "And not at the instance of Mr. Klesner or the firm of Hooper & Klesner." That is what I asked him.

The WITNESS. I disjoined the questions. Perhaps, if I would say "yes" to the whole interrogatory, it would be all right.

Question (by Examiner DUNHAM). Mr. Witness, I take it that you mean by those two answers this, that any changes in that directory after the date mentioned in that order were made by you, without instructions from your customer?

Answer. Yes, sir; that is what I mean. We took the initiative in such matters.

Mr. HAWKINS. After the order.

Examiner DUNHAM. That is what I understood him to say.

Question (by Mr. AHALT). These listings, such as Main 4763, have also included a listing in the classified department of your telephone directory. Is that correct?

Answer. Yes, sir.

Question. So that the name of Hooper & Klesner, under the contract that you have, would be carried in the classified part of your directories under "Painters and Decorators, Wall Papers and Window Shades"?

Answer. Whatever the nearest approximation to decorators is, Mr. Ahalt. I would have to look that up. They would be entitled to one listing.

Question. Do you mean by that that the contract only carries one classification in the classified department?

Answer. Yes, sir; it does under our existing practice.

Question. How long has that practice been in force?

Answer. That practice has been in force since we began the recasting of this directory, Mr. Ahalt; during past years.

Question. Pardon me just a minute. The recasting of which directory?

Answer. The recasting of the directory along the present three column line.

Question. Prior to that?

Answer. Prior to that we attempted, in so far as it was possible, to list the subscriber under those captions that nearest approximated his business. For example, if a man was a painter and
55 paper hanger, we would put him under painters, or whatever it was, painters and decorators, and then under wall papers.

Question. Mr. Hunt, if I understand you correctly, then, you or your office received instructions to list the firm of Hooper & Klesner under the classification of decorators and painters?

Answer. Only decorators, Mr. Ahalt. You see, they formerly had the listing "Hooper & Klesner, Painters." We received an order to change it from Hooper & Klesner, painters, to Hooper & Klesner, decorators. In answer to your question, I would say that they should appear under the caption "Decorators," or the nearest approximation to that that we have in the classified section.

Question. Will they appear as "Shade Shop, Hooper & Klesner," under the new directory?

Answer. The name Hooper & Klesner will not appear under "Window Shades," or—wait a minute; I can not answer your question. What was the question?

(The reporter read the question as above recorded.)

The WITNESS. No; they will not. They will appear as "Shade Shop," under "S." You see, that is the name of the subscriber, and here is an extra listing that is arranged for [indicating]. But that [indicating] is merely a move. When we move from one location to another, we have to indicate all the listings that the main contract carries. That is for the purposes of our office machinery. We moved the telephone Main 4763, the subscriber to which was Hooper & Klesner, which carried an extra listing under the "S's," the Shade Shop.

Question. I will ask you, then, whether or not your record shows that your office has received any request to add the name "Hooper & Klesner" to the words "Shade Shop," as now listed in the current directory published in the body thereof?

Answer. I have no record of having received that subsequent to the printing of the last directory.

Question. Does any part of this record that you have here include contracts for advertising, or anything of that kind?

Answer. Yes.

Question. I mean, as to Main 4763.

Answer. As to Main 4763, no; I have no advertising contracts here.

Question. Is your record supposed to include all the papers in connection with that matter?

Answer. Yes, sir; we are supposed to have all the papers. I will go ahead and say, Mr. Ahalt, if you please, that it may be that we have advertising contracts with Hooper & Klesner that are not here. It is possible that they become mislaid.

Question. That is what I was getting at.

Answer. It is possible—I won't say that it is absolutely certain that they would be here. We may have advertising with these gentlemen and the records may have become mislaid from this contract. We do the best we can to keep these records together.

Question. I might say, perhaps, that the reason I asked that question was that Mr. Klesner has entered into an advertising contract and has given instructions for the proper changes in that particular.

56 Answer. May the witness ask for a little information about that, because I am interested in it? To whom did you give that [addressing Mr. Klesner]?

Mr. KLESNER. To whom? I imagine he was a Baltimore man.

The WITNESS. Probably our Mr. Hale. How long ago was that?

Mr. KLESNER. It was some time in March.

The WITNESS. Some time in March?

Mr. KLESNER. Early in March.

The WITNESS. Then, that gives me a line on the answer to you, Mr. Ahalt. It is very possible that is in the course of being worked up. Our directory is in the press now.

Mr. KLESNER. I have the proofs now.

The WITNESS. Our contracts go to Baltimore for acceptance, and it is very possible that we have contracts with Mr. Klesner and they are not in this record yet.

Question (by Mr. AHALT). Mr. Hunt, what do your records show, if anything, as to any listing under the name "The Shade Shop" prior to June 5, 1915, the date, I believe you testified, as being that of the first contract you referred to?

Mr. HAWKINS. Which number?

Mr. AHALT. Mr. Sammons' number.

Mr. HAWKINS. 4874.

The WITNESS. My records disclose nothing prior to that date, Mr. Ahalt.

Question (by Mr. AHALT). Do you have any personal knowledge of any contract which you do not have here, for telephone service for "The Shade Shop"?

Answer. No, sir.

Question. Or for Mr. Sammons?

Answer. None whatever.

Question. I believe you stated that the first and main listing under that contract, for Main 4874, was that of W. Stokes Sammons?

Answer. Yes, sir.

Mr. AHALT. That is all.

Redirect examination by Mr. HAWKINS:

Question. Now, Mr. Hunt, I got a little confused here on one question that Mr. Ahalt asked you, which I asked to be repeated. Then, Judge Dunham asked a question or two. Let us see if we can get it straight. As I understand it, on January 3, 1916, you first listed Hooper & Klesner, Main 4763, as "Shade Shop." That is correct, is it not?

Answer. Yes, sir; that is correct.

Question. That was a request for a listing of that kind, as I understand it?

Answer. You recall my answer; my opinion is, it was.

Question. You said in your opinion that came from the subscriber?

Answer. Or some one interested.

Question. Or somebody interested with them. It was not at the instance of the office?

Answer. No, sir.

Question. I understood you to say to Mr. Ahalt that any changes in the listing of Main 4763 since that time had been at the instance of your office. Was not the change of February 1, from painters to decorators, made at their request?

57 Mr. AHALT. My question included directories only published up to this time, and this order you refer to refers to the coming directory.

Mr. HAWKINS. I see.

The WITNESS. That is really an anwser to that, Mr. Hawkins.

Question (by Mr. Hawkins). I thought it referred to the one that has gone to press. But this request for the change in the listing of Main 4763 from painters to decorators was made at the instance of the subscriber, as I understand it?

Answer. In my opinion it was; yes.

Question. Now, Mr. Hunt, if the subscriber, Mr. Klesner, had requested you, or does request you to drop the listing of Main 4763—the listing of "Shade Shop"—would your company accede to that request and do it?

Answer. If Mr. Hooper or Mr. Klesner asked that we do that?

Question. Yes.

Answer. Most assuredly.

Mr. HAWKINS. I think that is all.

Recross-examination by Mr. AHALT:

Question. Mr. Hunt, there is just one other question that is necessary in order to get my understanding clear about this listing of January 3, 1916. I believe you testified that the order or arrangement for this listing at that time was merely for "Shade Shop," and not "Shade Shop, Hooper & Klesner"?

Answer. No, Mr. Ahalt; this reads "Shade Shop, Hooper & Klesner."

Question. Then, that is the order for the listing as it was published and appears in Exhibits Nos. 12 and 13?

Answer. Yes; that is the order.

Question. And was not alone "Shade Shop?"

Answer. Not alone "Shade Shop."

Question (by Mr. HAWKINS). Following up Mr. Ahalt's question, I take it it would be proper for me to assume from your records that Mr. Klesner, or Hooper & Klesner, have never requested your

company to take the listing of "Shade Shop" out of the directory or discontinue that listing?

Answer. To the best of my knowledge and belief they have not.

Mr. HAWKINS. That is all.

(Witness excused.)

Mr. HAWKINS. Mr. Etchinson, will you please take the stand?

HOWARD ETCHINSON was called as a witness on behalf of the commission and, having been first duly sworn, testified as follows:

Direct examination by Mr. HAWKINS:

Question. Where is your office?

Answer. Davidson Building, Fifteenth and K Streets.

Question. What business are you in?

Answer. I am a builder.

Question. How long have you been in that business here in the District, Mr. Etchinson?

Answer. 17 or 18 years.

Question. Are you acquainted with Mr. W. Stokes Sammons, the gentleman sitting here at my left?

58 Answer. Yes, sir.

Question. Have you had any business relations with Mr. Sammons?

Answer. I have; I have been dealing with him for about 10 years.

Question. What have you been dealing with him in?

Answer. Window shades.

Question. How extensive have you dealt with him in window shades?

Answer. I don't know; I guess I have bought $10,000 worth of window shades from him—maybe more.

Question. In that period?

Answer. Yes, sir.

Question. Where were these window shades placed?

Answer. Principally in apartment houses that I have built in Washington City.

Question. Jobs that you have had?

Answer. Yes, sir.

Question. During that time, under what trade name has Mr. Sammons been operating his business?

Answer. Always, since I have ever known him, it has been called "The Shade Shop."

Question. In making settlements with Mr Sammons, did you pay by check?

Answer. Yes, sir.

Question. How were those checks made out?

Answer. "The Shade Shop."

Question. Has that been your custom during all this period of 10 years?

Answer. So far as I remember, yes.

Question. Do you recall a Mr. Pollock?

Answer. Yes, sir.

Question. Mr. Taylor Pollock. Where did Mr. Pollock live?

Answer. Mr. Pollock lived in Chevy Chase, Md.

Question. Did you ever have occasion to recommend Mr. Pollock's going to Mr. Sammons to buy some shades?

Answer. I built a house for Mr. Pollock in Chevy Chase. I didn't tell Mr. Pollock, or recommend him to anyone. I recommended Mrs. Pollock—I didn't recommend her; I told her to go to Sammons place, on Twelfth Street, The Shade Shop. She wanted to know how to get there——

Question (interposing). When was that?

Answer. Just the exact month I could not say. I think it must have been along about this time last year; maybe a little earlier and maybe a little later.

Question. How did that conversation come up, in which you recommended her to go there?

Answer. I was building this house for Mr. Pollock, as a contractor.

Question. Yes.

Answer. And in my contract with the Pollocks I was required to furnish window shades. When the time came to order these window shades, I told Mrs. Pollock to go to The Shade Shop on Twelfth Street and order them.

Question. Now, then, did you finally pay for the shades that she bought?

59 Answer. Yes, sir.

Question. Were the shades put in the house?

Answer. Yes, sir.

Question. Whom did you pay for those shades? Did you pay Mr. Sammons?

Answer. No, sir.

Question. Whom did you pay?

Answer. I paid Hooper & Klesner, but I didn't come in touch with either one of those men. I have never seen them. I don't know what this man's name is. [Indicating Mr. Klesner.]

Question. That is Mr. Klesner.

Answer. I have never seen him before.

Question. How did you happen to pay Hooper & Klesner for these shades?

Answer. I lived in Chevy Chase myself, and a man came to my house one morning early, about half past six or seven o'clock, with a bill for window shades. I could elaborate on this a little.

Question. Go ahead, but don't tell us anything that is hearsay.

Answer. It is not hearsay. I don't know who the man was. He came there with a bill. I had never seen him.

Question. This bill was for window shades?

Answer. Yes, sir.

Question. Who was the bill to?

Answer. The bill was addressed to Mr. or Mrs. Pollock.

Question. Was the bill from Hooper & Klesner?

Answer. It was on one of their billheads.

Question. The bill showed that it was for shades and the money was due and owing Hooper & Klesner?

Answer. Yes.

Question. What did the man say when he came?

Answer. He wanted to know if he was going to get paid for the shades. Pollock had failed in business and left the city, and it devolved on me to pay for the shades. He wanted to know if he was going to get his money.

Question. What did you say about it?

Answer. I told him yes; I would see that he was paid.

Question. Was that the first knowledge you had that Mrs. Pollock had not gone to Sammons?

Answer. Yes, sir.

Question. After you talked to the man who came to your house what happened? Did you ever go to Hooper & Klesner's store?

Answer. No, sir. The house at that time had been completed, and I told the man that I would go over there or with him at some future time, within the next two or three days, to make an examination of the shades; and if they were all right, I would pay for them. I met him there one morning, and I think there were two or three shades short, and they installed those shades, and then I paid them.

Question. Did you ever say anything to Hooper & Klesner, or any representative of theirs?

Answer. Yes; I cussed the hell out of this little fellow that came to my house. I told him he had a hell of a lot of nerve butting in on my business.

Question. How was he butting in on your business?

60 Answer. Because Mr. Klesner or Mr. Hooper knew that I was not a customer of theirs. I had never dealt with them.

Question. What did he say when you cussed him out? Did he talk like Dawes?

Answer. He was scared to death. He acted like he was scared to death. I don't know what his name was.

Question. What did he say about it?

Answer. He didn't say anything; he was so damned scared he didn't say anything. The shades were all right. But I don't know what the fellow's name was.

Question. Did he say anything at all about it?

Answer. He said that he had sold the shades to Mrs. Pollock. He was so damned scared that——

Question. He said that he had sold them?

Answer. Yes; that he had sold them.

Question. Did he say anything about what Mrs. Pollock said when she came in?

Answer. No; I don't think so. If he did, I don't remember it. I was so damned mad with the man, coming to my house about half-past six in the morning.

Cross-examination by Mr. AHALT:

Question. This man did not tell you that you were a customer of Hooper & Klesner, did he, Mr. Etchison?

Answer. No; he didn't tell me that. I told him that I had sent Mrs. Pollock, though, to Sammons's place, The Shade Shop on Twelfth Street.

Question. You yourself testified, I believe, that that is what made you mad, because he told you that you were a customer, and that they knew very well you were not a customer.

Answer. I did.

Question. You just now said that he did not tell you that you were a customer of Hooper & Klesner.

Answer. I didn't say that he said that at all. I said he knew that I was not a customer of their place when that woman came there, and they did not——

Question (interposing). The bill was made out to Mrs. Pollock, wasn't it?

Answer. Mrs. Pollock told me——

Question (interposing). Never mind what Mrs. Pollock told you.

Answer. I don't know who the bill was made out to.

Question. You said a while ago that the bill was made out to Mrs. Pollock.

Answer. I did not. I don't think I did.

Mr. HAWKINS. Yes.

The WITNESS. The man brought the bill there and I told him it was made out to Mrs. Pollock.

Mr. AHALT. That is all.

Redirect examination by Mr. HAWKINS:

Question. Have you ever been a customer of Hooper & Klesner?

Answer. No, sir.

Mr. HAWKINS. That is all.

Recross-examination by Mr. AHALT:

Question. Where has Mr. Sammons been located during these 10 years you have known him in business, Mr. Etchison?

61 Answer. When I first dealt with him, I think he was on Fifteenth Street, or Ninth Street.

Question. Whereabouts on Fifteenth or Ninth?

Answer. Up near Fifteenth and I Streets, I think it was.

Question. About 819 Fifteenth Street?

Answer. I could not say what the number was. It was somewheres in that block.

Question. Do you recall whether he was in the building with Mr. Luther Derrick, a dealer in wall paper?

Answer. No, sir; I don't remember.

Question. Do you know Mr. Luther Derrick, that used to be in the wall paper business?

Answer. No; I don't know him.

Question. Did you ever visit Mr. Sammons's place, or The Shade Shop, when it was on Fifteenth Street?

Answer. Yes, sir.

Question. What floor was it located on?

Answer. I think it was on the first floor. The place was about three doors from the corner of I Street. I don't know what the number was.

Question. Did I understand you to testify that you have invariably made checks payable to the order of "The Shade Shop" in paying bills?

Answer. Yes, sir.

Question. You are positive that you did not, during the years or during the time that he was on Fifteenth Street, from 1912 to 1914, make any checks payable to Luther L. Derrick?

Answer. No; I never made any checks payable to Derrick; no, sir. I would not say that I made them to any shade shop at that time. I made them direct to Sammons, I suppose. This is going back a long ways. I know of recent years I have made them to T Shade Shop. I think he carries his bank account that way.

Question. Did you ever visit the premises at Twelfth and H when he was there?

Answer. On the corner?

Question. Yes.

Answer. I don't believe I did, no. He moved around a whole lot during all these years. I couldn't keep track of him. He moved seven or eight different times. You would have a devil of a time in finding him in three or four years.

Question. Have you ever encountered any difficulty in getting him over the phone since 1915?

Answer. No. I don't think, on business, I have ever called him on the telephone.

Question. Have you ever had his place confused with any other shade shop?

Answer. No, I have not; no.

Question (by Mr. HAWKINS). Where are the Pollocks now, Mr. and Mrs. Taylor Pollock?

Answer. I don't know. I would like to know where they are myself.

Question. They are not living in Washington, evidently, then?

Answer. No.

62 Question. Is it your practice, in your business, with a customer of yours, to recommend customers or clients of yours to Mr. Sammons to buy shades?

Answer. Always, yes, sir. I have never bought any window shades from anyone else.

Question. Do you recommend your people to go to him?

Answer. Yes, sir.

Mr. HAWKINS. That is all.

(Witness excused.)

Mr. HAWKINS. Mr. Wills, will you please take the stand?

D. ALEXANDER WILLS (colored) was called as a witness on behalf of the commission and, having been first duly sworn, testified as follows:

Direct examination by Mr. HAWKINS:

Question. Mr. Wills, what business are you in?

Answer. I am a hotel porter, sir.

Question. What hotel are you connected with?

Answer. The Dewey.

Question. How long have you been connected with the Dewey Hotel?

Answer. Seventeen years last March.

Question. Who is the proprietor of the Dewey Hotel?

Answer. Mr. Frank P. Fenwick.

Question. How long has Mr. Fenwick been proprietor of the Dewey Hotel?

Answer. Five years.

Question. Who was the proprietor before him?

Answer. Mr. Henry F. Woodward.

Question. Are you acquainted with Mr. Sammons, the gentleman sitting here? [Indicating.]

Answer. Yes, sir.

Question. How long have you known Mr. Sammons?

Answer. I have been knowing Mr. Sammons about 10 years.

Question. Have you ever bought any window shades from him?

Answer. Yes, sir.

Question. How often during the last 10 years have you bought window shades from Mr. Sammons?

Answer. Oh, several—four or five different times.

Question. At whose instance or request did you buy the shades? In other words, did you buy them for yourself, or for the hotel?

Answer. No; I bought them for the hotel, sir, on order of Mr. Fenwick.

Question. Mr. Fenwick directed you to buy the shades for the hotel?

Answer. Yes, sir.

Question. Was it part of your duties as porter at the Dewey Hotel to purchase the shades that were ordered?

Answer. Yes, sir, or anything else they want in that line around the house.

Question. Before Mr. Fenwick came in as proprietor of the Dewey Hotel, Mr. Wills, did the Dewey Hotel buy shades from Mr. Sammons?

Answer. Yes, sir; the same thing.

63 Question. Did you have directions from the former proprietor to buy them from him?

Answer. Yes, sir.

Question. So that during this 10 years that you have been buying shades for the Dewey Hotel, you did so at the direction of the proprietor at all times?

Answer. Yes, sir.

Question. Has the Dewey Hotel bought all their window shades during this period from Mr. Sammons?

Answer. No, not all of them; only when they need five or six, or ten, you see, something like that; but the large orders, you know—they hire a man; they buy the goods and hire a man to make them up. But when they want a dozen, or half a dozen, they gave me an order to go down and get them.

Question. Did you ever go down to the corner of Twelfth and H streets and buy some window shades for the Dewey Hotel, of Hooper & Klesner?

Answer. I thought I was going in the Shade Shop.

Question. When was that?

Answer. About two years or better ago.

Question. I want you to tell the examiner the circumstances and what occurred, and all about it.

Answer. I went down there—I know Mr. Sammons was in the same place, you know, the Shade Shop, you see, and evidently he had moved next door.

Question. Did you know when you went there that he had moved?

Answer. No. I see "Shade Shop," you see, and I thought I was going in the same place I always go.

Question. When you went in, what happened?

Answer. I asked for Mr. Sammons.

Question. Whom did you talk to, a man or a woman?

Answer. It was a man.

Question. Do you know his name?

Answer. No, sir; I do not know his name.

Question. This is Mr. Klesner sitting here [indicating]. Was it Mr. Klesner?

Answer. No, sir; I don't believe it was.

Question. When you went in and asked for Mr. Sammons, what did the man in the store at Twelfth and H say?

Answer. "What do you want? Do you want to leave an order?" I says "Yes." I says, "This is where the Dewey Hotel orders their shades?" He says, "Yes." He says Mr. Sammons was out.

Question. He said Mr. Sammons was out?

Answer. Whichever one I first asked him was he in, see.

Question. And then what did you say?

Answer. "Well," I says, "I want to see some shades for the Dewey. Is this right? Is this where the Dewey orders?"

Question. What did he say?

Answer. He says "Yes, we will take your order." He took the order and sent it up, and I didn't discover the mistake until Mr. Fenwick showed me the bill. He says, "I didn't tell you to order from this place."

Question. Mr. Fenwick, the proprietor, then called your attention to the fact that you had gone to the wrong place?

64 Answer. He called my attention to it; yes.

Question. Did the Dewey Hotel ever buy shades of Hooper & Klesner?

Answer. No, sir; because I did all of their ordering, except when they ordered big lots, you see, the same as I told you. When they want two or three, or half a dozen, I go to this particular place and get them.

Question. Since that time, have you bought shades from Mr. Sammons?

Answer. I have not bought any from him since, because they had some upholsterers there, you know, and they bought the bolts, and had them made, but previous to that I was getting them right along.

Question. Mr. Wills, what caused you to think that that store there at the corner of Twelfth and H was Mr. Sammons's store?

Answer. Because he was in there previously.

Question. Had you bought shades of him there previously?

Answer. Yes, sir.

Question. Were they any signs on the windows at all?

Answer. "Shades."

Question. What was the sign? Do you recall the sign that was on there the day that you went in and thought that you were dealing with Sammons?

Answer. I don't know whether—I didn't notice any sign particularly, you know. I know that is where I had been ordering the shades, you see, the Shade Shop.

Cross-examination by Mr. AHALT:

Question. When was this purchase you speak of?

Answer. About two years ago.

Question. When did you say that Mr. Fenwick left the hotel, or came to the hotel?

Answer. About five years ago.

Question. He came there above five years ago?

Answer. Yes, sir.

Question. He is still there?

Answer. No, sir; he is not there just at present. About the eighth of last month he gave up, and the Salvation Army bought it.

Question. You say that you have been there before, at Twelfth and H Streets, and purchased shades of Mr. Sammons?

Answer. Yes, sir.

Question. And you knew that was the place?

Answer. Many a time; yes, sir.

Question. But you did not know that he had moved?

Answer. I asked was he in, you see.

Question. I asked you, when you went there, did you know whether he had moved or not?

Answer. No; I didn't know.

Question. Why did you ask that, if this was the right place?

Answer. Because I didn't see him.

Question. They told you he was not there, didn't they?

Answer. No.

Question. What did they say?

65 Answer. Told me he was out.

Question. And then you asked, on top of that, whether that was the right place or not?

Answer. Yes; this is the place——

Question (interposing). What did you ask them?

Answer. I asked them, "Is this Mr. Sammons's?" And he says, "Yes."

Question. You testified a while ago that you asked if this was the right place?

Answer. Yes.

Question. Now, you say that you asked if this was Mr. Sammons's place. Which did you ask?

Answer. I asked if this was Mr. Sammons's place, the same as I did at first, see?

Question. Why did you testify a while ago that you asked whether this was the right place?

Mr. HAWKINS. I think that is arguing with the witness.

The WITNESS. I was looking for him, you see, the same as always.

Question (by Mr. AHALT). You say you knew he was there, and you did not know he had moved, and I asked you why you testified a while ago that you asked if this was the right place.

Mr. HAWKINS. He said once that the reason Sammons was not there——

Mr. AHALT (interposing). Let him tell it.

The WITNESS. Because he was not there. That is what puzzled me, you know, because I didn't see him.

Question (by Mr. AHALT). And then you asked "Is this the right place?"

Answer. I asked was this the place that the Dewey ordered the shades, certainly; that is what I said.

Question. Did you ask if this was the right place?

Answer. Because I didn't see Mr. Sammons.

Question. I didn't ask you why. I asked you if you did ask that question.

Examiner DUNHAM. The question is, now, "Did you ask if that was the right place?"

The WITNESS. Yese; where the Dewey ordered the shades, yes.

Question (by Mr. AHALT). Why did you ask that, if you knew you had been placing all the orders for the Dewey with Mr. Sammons, and you knew Mr. Sammons had been there, and you did not know he had moved? Why did you ask if this was the right place, and the place where the Dewey bought shades?

Mr. HAWKINS. I am going to object to that as being purely argumentative. He is trying to get into an argument with the witness.

Mr. AHALT. I am not trying to get into an argument with the witness, if the examiner please.

Examiner DUNHAM. The objection is in. Let the witness now answer.

The WITNESS. Because I wanted to be sure that I gave the order to the right man, who I was sent to; that is why I said that.

Question (by Mr. AHALT). What signs did you see on the place when you came up there on that occasion?

Answer. "Shades."

66 Question. "Window shades" or "shades"?

Answer. "Shades"; that is all I noticed. I know that is where I have been always going to get shades.

Question. You just saw "shades" on the window, and you went on in?

Answer. Yes, sir.

Question. Did you see any other name on the window?

Answer. I can't say that I did.

Question. Did you ever, prior to that time, when you were going in there, observe any other names on the window?

Answer. No, sir.

Question. Or on the place?

Answer. No, sir; I always looked for the shade shop.

Question. But on this occasion you did not see the shade shop; you just saw "Shades"?

Answer. I just walked in, you see; I thought I was going in the shade shop, see?

Question. It was a mistake on your part that you went in there?

Answer. Yes.

Mr. AHALT. That is all.

Mr. HAWKINS. That is all.

(Witness excused.)

Mr. HAWKINS. I will have two more witnesses to-morrow morning—Mr. Sammons and a man who works for him.

Examiner DUNHAM. We will adjourn at this time until 10 o'clock to-morrow morning.

(Whereupon, at 4 o'clock p. m., an adjournment was taken until to-morrow, Friday, April 15, 1921, at 10 o'clock a. m.)

Before the Federal Trade Commission

[Title omitted.]

ROOM 2702, FEDERAL TRADE COMMISSION BUILDING,
Washington, D. C., Friday, April 15, 1921.

Met pursuant to adjournment at 10 o'clock a. m.

Before: Examiner J. J. Dunham.

Appearances: Mr. Gaylord R. Hawkins, appearing on behalf of the Federal Trade Commission; Mr. C. R. Ahalt, 1406 G Street NW., appearing on behalf of defendant.

JOHN T. HORIGAN was called as a witness on behalf of the commission and, having been first duly sworn, testified as follows:

Direct examination by Mr. HAWKINS:

Question. Where do you live, Mr. Horigan?

Answer. 4007 Fifth Street.

Question. How long have you lived in Washington?

Answer. Thirty-three years.

67 Question. What business are you in, Mr. Horigan?

Answer. I am employed as shade cutter; I am in no business.

Question. Whose employ are you now in?

Answer. W. Stokes Sammons, The Shade Shop.

Question. That is the gentleman sitting over here at my left, is it?

Answer. Yes, sir.

Question. How long have you been working for Mr. Sammons?

Answer. Somewhere around 15 or 16 years. I worked three or four years for him, and left him for a couple of months, and then came back.

Question. When you first knew him, what business was he in?

Answer. In the window-shade business.

Question. That was 15 years ago, you say, about?

Answer. Yes, sir.

Question. Do you remember where his store was?

Answer. Yes, sir.

Question. Where was it?

Answer. 1403 New York Avenue.

Question. What were your relations with him at that time? Did you work for him at that time, or did you have business with him?

Answer. I started to learn the window-shade business from him.

Question. At that time was he operating his business under any trade name at all?

Answer. The Shade Shop.

Question. How long did he continue there at that address, if you remember?

Answer. Two years.

Question. Do you know where he moved from there?

Answer. He moved to 813 Fourteenth Street.

Question. Was he in business alone there by himself then?

Answer. Yes, sir.

Question. What name, if any, did he have?

Answer. The Shade Shop.

Question. Did he have this name displayed on any signs around the building in any way?

Answer. Yes, sir.

Question. How and where?

Answer. He had a sign there—I guess it was about 4-foot wide and 9-foot long, between the two windows of 1403 New York Avenue. He had a sign there, and I think Goldsmith made the sign for him. Goldsmith got a permit to put the sign up, and then after he moved from 1403 New York Avenue, why, I was off for a couple of days doing something, and some fellows and I, we contracted to take that sign down for $2.00, this big 4 by 9 sign.

Question. Where did he move to from there?

Answer. 803 Fourteenth Street.

Question. What sign did he use there?

Answer. He used the same sign that I helped to take down.

Question. Did he have any signs on his windows at any of those places, or painted on the windows?

Answer. To the best of my knowledge, he had a little sign—I guess it was about 4-foot high and about 3-foot wide. It just had on it "The Shade Shop" in gold letters, raised letters.

Question. That was on the window?

Answer. Yes, sir; that was sitting in the window.

68 Question. In the window?

Answer. Yes.

Question. What I was talking about, Mr. Horigan, was signs painted on the window.

Answer. No, sir; there was no signs painted on the window at 1403 New York Avenue.

Question. After he went from 1403 New York Avenue, where did you say he moved to?

Answer. 813 Fourteenth Street.

Question. About how long was he there?

Answer. He was there the best part of two years.

Question. What signs, if any, did he use there?

Answer. He used the same sign there that I helped to take down and put up there.

Question. Then, where did he go from there?

Answer. He went to 1222 H Street.

Question. Did he use any signs in connection with his place of business at 1222 H Street?

Answer. Yes, sir.

Question. What were they?

Answer. He had, in green letters, over the front window, "The Shade Shop." He had a big window there then. The building has

since been torn down and remodeled; and then, on each side he had "Window Shades."

Question. Were you working with him there at 1222 H?

Answer. Yes, sir.

Question. Where did he move from 1222 H, if you recall?

Answer. Back to 813 Fourteenth Street.

Question. What signs did he have when he went back to Fourteenth Street?

Answer. "The Shade Shop."

Question. Did he have anything on his window?

Answer. No, sir; he had put that big sign back there again.

Question. The same sign that he had before?

Answer. Yes. We used it for awhile around on H Street as a tack-on table, turned upside down.

Question. From 813 Fourteenth Street, where did Mr. Sammons move?

Answer. He moved to 724 Eleventh Street.

Question. What signs did he have there?

Answer. He had a bay window there, and he had both "The Shade Shop" and "Window Shades" on the side.

Question. From 724 Eleventh Street, where did you go?

Answer. He moved to 819 Fifteenth Street.

Question. When he was at Fifteenth Street, what signs did he use?

Answer. Why, he had up two signs, in between the windows, the best I can remember now, small signs, "The Shade Shop."

Question. Now, at the Fifteenth Street address, what part of the building did he occupy?

Answer. Second-floor front.

Question. Was there anybody else in the building, any other business?

Answer. Yes, sir.

69 Question. Who?

Answer. Luther L. Derrick, paper-hanging business.

Question. Mr. Derrick, you say, was in the paper-hanging business?

Answer. Yes, sir.

Question. Did he sell any shades at all?

Answer. I guess he did sell shades.

Question. Did he make any?

Answer. No, sir.

Question. How did he advertise himself in his business?

Answer. Luther L. Derrick, paper hanger and painter.

Question. Did he have a sign of that kind on his building?

Answer. Yes, sir; right below the bay-window, "Luther L. Derrick, Painting and Papering," or "Paperhanger and Painter," or something on that order.

Question. What part of the building did Mr. Sammons occupy?

Answer. The second-floor front, the big room in the second-floor front, and a little room right in back of that we used for a stock room.

Question. Where were the shades manufactured?

Answer. In the second-floor front.

Question. Did Mr. Sammons ever have a desk, or show space down stairs at all, on the first floor.

Answer. No, sir; not as I know of. I never done any business down on the first floor.

Question. Do you recall that he had a desk down there?

Answer. I don't know who had a desk down there. I never stopped in there.

Question. You never stopped there?

Answer. I didn't have nothing to do with the place down there.

Question. Now, at the time that you were at 819 Fifteenth Street, whom were you working for?

Answer. W. Stokes Sammons.

Question. Who paid you?

Answer. W. Stokes Sammons.

Question. Did he pay you for your services in cash, or by check?

Answer. He paid me in cash.

Question. Did you have any business relations at all with Mr. Derrick?

Answer. No, sir.

Question. Did Mr. Derrick ever pay you for your services at all?

Answer. No, sir.

Question. Do you know whether Mr. Sammons was in business for himself or whether he was working for Mr. Derrick at the time he was there?

Answer. The way I understood, why, Mr. Derrick was a financial man. He put up a little money; but the way I understood it and the way I could outguess Mr. Derrick was that he wanted a lot for his money.

Question. It is not a question of guessing. You were working there, and it is a question of what you knew about it.

Answer. That is all I knew.

Mr. AHALT. Let him explain. Let him finish what he started to say.

70 The WITNESS. He was just a financial man, or something on that order. That is all my relations was with Mr. Derrick.

Question (by Mr. AHALT). You started to say something else. You referred to the way you outguessed him.

Answer. The shop was there, see, and all the stock was in there.

Question. How was that?

Answer. All the stock was right there; that is what I mean.

Question. All the stock?

Answer. Yes.

Question (by Mr. HAWKINS). Now, what did Mr. Derrick have to do, and what did he do with Mr. Sammons' business that you saw or knew of?

Answer. He didn't have—the only thing I knew he had to do—I heard, in a way, that he was a financial man, in Mr. Sammons' business.

Question. You were there and you were working for Mr. Sammons?

Answer. Yes, sir.

Question. You knew what was going on, of course, up there on the second floor?

Answer. Sure.

Question. Was that business being run and conducted by Mr. Sammons or Mr. Derrick—that shade business there?

Answer. It was being run by Mr. Sammons.

Question. Did he use a trade name?

Answer. The Shade Shop.

Question. At that time, and at these previous times that you have told us of, did it come to your knowledge that Mr. Sammons was advertising at all in any way?

Answer. Yes, sir.

Question. How did he advertise?

Answer. Why, the first time that I recall him advertising—why, he advertised on Fourteenth Street.

Question. No, advertised how?

Answer. He was giving pocketbooks away. On the inside of the pocketbooks it had "Compliments of The Shade Shop, W. Stokes Sammons, Proprietor, Exclusive Manufacturers of Window Shades, 813 14th Street."

Question. Did you ever see any other advertising matter that you know of when you were there in the business?

Answer. At 813 Fourteenth Street, I think—only outside of the letterheads and billheads, that is all.

Question. He carried "The Shade Shop" on his letterheads and billheads at all these places?

Answer. Yes, sir.

Question. During the time you were at 819 Fifteenth Street what part of the building did Mr. Derrick occupy with his business?

Answer. Mr. Derrick occupied the entire first floor, I guess, because I never was down there, only walking through the door and a couple of rooms in back of The Shade Shop and upstairs.

Question. Did it ever come to your knowledge during the time that you were there, at 819 Fifteenth Street, that Mr. Derrick took any part in the conduct of Mr. Sammons's business?

Answer. No, sir.

71 Question. Did Mr. Derrick meet any of the customers that came there at any time—window-shade customers that came to see Mr. Sammons?

Answer. Well, I couldn't say that, sir. I was upstairs working on the second-floor front.

Question. Customers, then, came downstairs, did they?

Answer. I waited on a lot of them upstairs.

Question. The ones that you waited on, I assume, you were taking orders from?

Answer. Yes, sir.

Question. And you were displaying the shades to them?

Answer. Yes, sir.

Question. Did Mr. Derrick at any time have anything to do with that—the ones that you knew about?

Answer. No, sir; no transaction at all.

Question. Did Mr. Derrick give you any orders or instructions concerning your work there at all?

Answer. No, sir.

Question. How many men were there besides you working in the window-shade business?

Answer. Two besides myself that I can recall.

Question. How were they working, for Mr. Sammons or Mr. Derrick?

Answer. They were working for Mr. Sammons.

Question. Do you know who paid them?

Answer. Mr. Sammons or myself.

Question. From whom did they get their orders or instructions?

Answer. From Mr. Sammons or me.

Question. Did you ever know Mr. Derrick to ever give them any orders or instructions at all?

Answer. No, sir.

Question. What was their work? What kind of work did they do for Mr. Sammons?

Answer. Making and hanging window shades and measuring.

Question. Now, when they hung the window shades and measured them, was it necessary for them to go out to the houses or apartments and take the measurements and hang them and install them?

Answer. Yes.

Question. When you did this and other men went out to measure windows or to install window shades, or to hang them, did Mr. Derrick instruct you where to go or did Mr. Sammons?

Answer. Why, of course, I kind of instructed the men where to go myself.

Question. Where did you get your instructions?

Answer. From Mr. Sammons. If Mr. Sammons was not there I would give the instructions; I would run the business the way I would want to run it.

Question. Would you ever get any instructions from Mr. Derrick?

Answer. No. sir.

Question. You never did, of any kind?

Answer. No, sir.

Question. Where did you move from 819 Fifteenth Street, Mr. Horigan?

Answer. To the corner of Twelfth and H.

72 Question. Which corner?

Answer. Southeast corner.

Question. About when was that, do you recall?

Answer. That was about 1915.

Question. What time of the year?

Answer. Wait a minute, now. That was about 19—I think it was somewhere around, I guess, about 1913 or 1914.

Question. About what time of the year was it? Do you recall that?

Answer. No, sir; I don't recall just what time of the year.

Question. Now, at the southeast corner of Twelfth and H Street, did Mr. Sammons occupy the whole of that storeroom, or not?

Answer. No, sir.

Question. Who else was there?

Answer. Hooper & Klesner.

Question. What business was Hooper & Klesner in?

Answer. Wall paper and painting.

Question. What part of the premises did Mr. Sammons occupy?

Answer. Mr. Sammons—well, I don't know whether it was any agreement that you could not occupy the whole space, or what it was, but, as far as I can understand, Mr. Sammons was paying half the rent, and Hooper & Klesner was paying the other half of the rent. Customers would come in one door, and we had the shade shop back in the way, so it would not interfere with the customers, and the workmen.

Question. How many men did you have working for you there?

Answer. At Twelfth and H?

Question. Yes; Twelfth and H.

Answer. Why, I guess about five men, at different times?

Question. What part of the premises there did you use for making your shades?

Answer. Why, the south corner of the store.

Question. That would be on Twelfth Street, then?

Answer. That would be on Twelfth Street.

Question. Was there an entrance in there also?

Answer. Yes, sir.

Question. The main entrance was at the corner of Twelfth and H?

Answer. There was two entrances to the store.

Question. When you went there, what signs were on the premises, if you recall?

Answer. No signs when we went there.

Question. After you went there what signs were put on?

Answer. Mr. Sammons had "The Shade Shop" put on around all the windows, and "Window Shades" all around the windows and around on H Street, also.

Question. How long had you known——

Answer (interposing). And then there was more signs on the place, too.

Question. How long had you known the firm of Hooper & Klesner—that is, when you went there?

Answer. When I went to Twelfth and H?

Question. Yes.

Answer. I should say about three years, sir.

73 Question. What business had they been in during that time?

Answer. Paper hanging and painting.

Question. Had you ever known them to be engaged in the manufacture of window shades?

Answer. No, sir.

Question. How long did you stay there at Twelfth and H?

Answer. Why, I guess about two years, sir, or something like that. I am just guessing.

Question. Just approximately.

Answer. Yes.

Question. Then where did you move?

Answer. 733 Twelfth Street.

Question. About how many doors was that from the Twelfth and H Street store?

Answer. It was two stores between there and the entrance to the apartment upstairs.

Question. Did Mr. Sammons use any trade name there?

Answer. Yes, sir.

Question. What was it?

Answer. The Shade Shop.

Question. What signs, if any, did he have on his place of business there?

Answer. "The Shade Shop;" "Window Shade;" and then, up on top of the building, on the front of the building—this was on the bay window—"The Shade Shop," and "Window Shades;" and then, on the front of the building, up top, he had, "The Shade Shop, W. Stokes Sammons, Proprietor."

Question. Do you recall any advertising matter of any kind that he got out during that period that you were there, at 733 Twelfth Street?

Answer. He was advertising in the papers.

Question. How did he advertise?

Answer. "The Shade Shop, No Branches," and all that sort of stuff, "Don't Be Confused; Go To The Right Place." All such advertisement.

Question. How long did you stay there at 733 Twelfth?

Answer. I left there—well, I should say I was there—he was in that building, I think, five years, and I was with him about four years and nine months, as far as I can remember.

Question. Where is he located now?

Answer. He is located now at 830 Thirteenth Street.

Question. 830 Thirteenth Street?

Answer. Yes, sir.

Question. Did he move from 733 Twelfth Street, do you know?

Answer. Yes, sir.

Question. What signs does he have on his building at the Thirteenth Street store?

Answer. He has "The Shade Shop."

Mr. AHALT. I consider this testimony irrelevant, for the reason that what has taken place here, as I understand it, has taken place since the filing of this complaint.

Examiner DUNHAM. You object to it for that reason?

Mr. AHALT. I object to it on that ground.

74 Examiner DUNHAM. Now, the objection is in, Mr. Witness. You may answer, if you can.

The WITNESS. He has those—I don't know whether they call them iron letters or wire letters—whatever it is, he has that on the front of the building, "The Shade Shop, W. Stokes Sammons." He had a man cut them down and fix them on there.

Question by Mr. HAWKINS. Is that on the window or on the building?

Answer. On the building, sir. I will tell you all the signs, in a minute, sir. Then he has on the bay window, "The Shade Shop, Window Shades," in green and gold, black trimmings, or something like that.

Question. Now, Mr. Horigan, do you recall the time that Mr. Sammons moved from the corner of Twelfth and H down to 733 Twelfth Street?

Answer. I do, sir.

Question. Do you recall going with him and removing the signs on the windows of the Twelfth and H Street store?

Answer. Yes, sir.

Question. I wish you would tell me the facts and circumstances about that, whether you removed them, and what happened.

Answer. Do you want me to start right from when we started moving?

Question. Yes.

Answer. It was on Sunday morning, and I guess I got down there about 9 o'clock. I changed my clothes and put them in a little archway, something like this [indicating], between the two stores, and then we started to get everything out—the shade tables and stock and everything—into two doors below, and after we got all the tables and sewing machines and stock out, why, I started to get up on the ladder to take some sample window shades down and to scratch the—I also had a Gillette safety razor blade—to scratch

the signs off the windows. I started up the ladder and this man Klesner drew a gun and he says, "Hold up there, Pat and Sammons; get out of here or I will shoot you."

Question. That was Mr. Klesner?

Answer. Yes.

Question. That is, the gentleman sitting over here [indicating]?

Answer. That is the man, sir.

Question. Had you started at that time to remove the sign on the window—to scratch it off?

Answer. I was just getting up the ladder.

Question. Then, after he pulled the gun and ordered you out, what did you do?

Answer. He backed us out the door.

Question. Who was present at the time?

Answer. Why, Mr. Sammons and myself, and Mr. Klesner—the three of us was there.

Question. Had you removed any of the signs at that time?

Answer. No, sir; I was just getting up on the ladder.

Question. Then what happened?

Mr. AHALT. What was that last question?

Mr. HAWKINS. I asked him if he had removed any of the signs at that time, and he said no, he was just getting up on the ladder.

75 The WITNESS. I was up about three steps on the ladder.

Question (by Mr. HAWKINS). When you and Sammons got out, after he ordered you out and pulled the gun on you, then what happened?

Answer. Mr. Sammons ran over to the drug store and telephoned down to No. 1, and the police—I guess in a minute, Officer Mansfield, came up there, and this man Klesner had both doors locked. In the meantime, when this police—Mr. Sammons telephoned for the police, and in the meantime we were waiting there looking in the window, and Mr. Klesner gets up from this desk, where he was sitting like this [indicating], and he goes around in back of the screen and he comes back and sits down there, and when he comes back and sits down then the police rides up on the bicycle and the police shook the knob of the door and saw the door was locked and he called Mr. Klesner and Mr. Klesner opened the door and he walks back after he opens the door; he walks back and sits down at this desk again and the police says, "Have you got a gun?" And Mr. Klesner kind of didn't know what the man was talking about, why he asked for a gun.

Question (by Mr. AHALT). Were you in the store at that time, Mr. Horigan?

Answer. I was. I went in behind the police, and Mr. Sammons also.

Question (by Mr. HAWKINS). Go ahead and tell us the rest of it.

Answer. The police asked Mr. Klesner for the gun and Mr. Klesner opened the drawer and handed it to the police.

Question. Then what happened?

Answer. The police says, "Come on down to the station house." Mr. Klesner sat still and didn't answer the police and the police says, "Well, come on; you better go with me."

Question. Did he go?

Answer. Sure he went.

Question. Then, after Mr. Klesner went down with the policeman to the station, what did you and Mr. Sammons do?

Answer. Mr. Sammons and I went down there also.

Question. Did you come back to the store then, afterwards?

Answer. Yes, sir.

Question. What did you do with reference to the sign on the window?

Answer. Why, Mr. Sammons opened the door, took the key and put it in the door of 741 Twelfth Street, unlocked the door, and we went in there and the first thing I got was to get my clothes, to see if they were there yet. My clothes were still in there during all this gun trouble, and Mr. Sammons and I went in there. Mr. Sammons says, "We will take these sample shades down, and also take this name of 'The Shade Shop' off the window."

Question. Where was Mr. Klesner then?

Answer. He was down in the "cooler," I guess.

Question. Then, after Mr. Sammons said he would take the sign off the window, did you do it?

Answer. Yes, sir.

Question. Who did it, you or Sammons, or both of you?

Answer. Mr. Sammons and I, both of us.

Question. How did you remove it?

76 Answer. With the safety razor blade; just scraped it with a shade knife, and got a little ammonia and water.

Question. Then what happened? Did you move anything else out from there, any of your property?

Answer. I moved my clothes out.

Question. You took everything you had?

Answer. Yes, sir.

Question. How soon after that did you open up your new store?

Answer. We started to work in there that day, to straighten things around, and started to do business right the next morning, over there.

Question. And the incident you have just related was on a Sunday?

Answer. Yes, sir.

Mr. HAWKINS. Cross-examine.

Cross-examination by Mr. AHALT:

Question. Mr. Horigan, you say that these pocketbooks Mr. Sammons gave away contained the name, "The Shade Shop, W. Stokes Sammons, Proprietor"?

Answer. Yes, sir.

Question. When you moved Mr. Sammons to Mr. Derrick's place, what did you understand from Mr. Sammons to be the understanding or arrangement with Mr. Derrick as to that particular storeroom?

Answer. I didn't know anything about that, sir.

Question. How frequently did you go in Mr. Derrick's place on the first floor?

Answer. Every morning and every evening.

Question. I mean in Mr. Derrick's first-floor room.

Answer. In his showroom?

Question. Yes.

Answer. I was seldom there.

Question. Did Mr. Derrick have any shades on display there, sample shades, or anything of that kind, in his show windows or room?

Answer. No, sir.

Question. He did not?

Answer. Not that I know of.

Question. Would you state positively that he did or did not?

Answer. No, sir; not positively.

Question. You went in and out that building every day, however, time and time again?

Answer. Yes, sir.

Question. I believe that the first floor of this building had a bay window?

Answer. Yes, sir.

Question. And this bay window acted as a show window for Mr. Derrick's business, did it not?

Answer. Yes, sir.

Question. If there had been any shades on display in that window, you, going in and out every day, would not have seen them?

Answer. I would have.

Question. You would have seen them?

Answer. Yes, sir.

77 Question. Is that the basis for your statement that there were not any there?

Answer. The best that I can remember—I remember when it was shades there, though; but when I was going in and out of there every day, I don't think there was any shades in that window.

Question. When do you remember there being shades in that window?

Answer. After Mr. Sammons moved down to Twelfth and H Streets, why, Mr. Derrick's nephew put two shades in there.

Question. I believe you testified that you waited on some of the customers and took orders upstairs yourself?

Answer. That is, if any came in, the ones that came upstairs to The Shade Shop on the second floor; I waited on them; yes, sir.

Question. Did any of them come into the first floor, into Mr. Derrick's place?

Answer. Well, the same as I told the other gentleman, I couldn't tell you, because I never went out unless I had to go out on business, and that was the only time I was downstairs.

Question. Do you know a Mrs. Scott that was in the employ of Mr. Derrick at that time?

Answer. I know of Mrs. Scott.

Question. Did Mrs. Scott ever bring orders upstairs for shades and turn them over to you?

Answer. No, sir.

Question. Did Mr. Derrick ever bring orders for shades upstairs and turn them over to you?

Answer. No, sir.

Question. Did you ever see him bring them upstairs and turn them over to Mr. Sammons?

Answer. No, sir. I could not say I did.

Question. Was most of your time occupied in the workroom or outside?

Answer. In and out.

Question. What part of your time, if you can approximate it, did you spend in the workshop?

Answer. Well, very near, I will say, two-thirds of my time was in the shop.

Question. Then, if Mr. Derrick or Mrs. Scott brought any orders up there, or had any occasion to take orders of any consequence upstairs, you would have been pretty likely to have been there to receive some of them, would you not?

Answer. Yes, sir; if they had brought them up when I was there, I certainly would have saw them.

Question. Was there anything on this bay window to which I have referred on the first floor, in the nature of the name, "The Shade Shop?"

Answer. No, sir.

Question. You are positive of that?

Answer. I am most sure, sir.

Question. Was there anything about window shades on Mr. Derrick's show window?

Answer. No, sir.

Question. Was there anything on the building on the outside between the first and second floors, where your shop was located?

78 Answer. Between the first and second floors?

Question. Yes.

Answer. No, sir.

Question. Mr. Derrick had the entire building there, didn't he?

Answer. Outside of those two rooms, the second floor front. The way I understood, he had the whole building. He was trying to rent it out. He had a sign on there, "Offices For Rent."

Question. How is that?

Answer. He had a sign on the place, "Offices For Rent."

Question. You said in your testimony awhile ago that you guessed Mr. Derrick sold some shades.

Answer. Yes, sir.

Question. What is the basis of your guess?

Answer. Yes, sir.

Question. I say, what is the basis of your guess that he had sold some?

Answer. Well, I think Mr. Derrick, in the line of business that he was in—why, he was called to estimate on window shades.

Question. To estimate on window shades?

Answer. Yes, sir.

Question. Who made them up for him?

Answer. Who made the window shades up for him?

Question. That is what I asked you.

Answer. The Shade Shop.

Question. Then Mr. Derrick did place orders with The Shade Shop, or with Mr. Sammons, for the making up of shades?

Answer. Yes, sir.

Question. Do you have any personal knowledge of any orders that Mr. Derrick turned over to you, or to Mr. Sammons, for the making up of shades?

Answer. Why, Mr. Derrick never turned any orders over to me, sir, and I don't know what the transaction was in the business, whether he turned them over to Mr. Sammons, or what; but I would say that if we went and did a job for Swartzell, Rheem & Hensey, who are the agents for the building; of course, Mr. Derrick, I think, got all those orders from Swartzell, Rheem & Hensey; but when we had the order we just charged the order to Derrick.

Question. To Derrick?

Answer. Yes.

Question. Did you have the making up or the charging of those accounts to Derrick?

Answer. No, sir.

Question. How do you know they were charged to Derrick?

Answer. Well, because if I went and measured a job and cut a job I would put in the book, "Derrick, 1720"—any address, whatever it is—"4 shades, sizes—."

Question. Did you have anything to do with the keeping of the books, aside from that daily book that you refer to?

Answer. No, sir.

Question. You do not know, for instance, whether accounts were made out to Mr. Derrick or not, do you?

Answer. No, sir.

79 Question. You do not know whether the bills, then, were made out to the respective customers of The Shade Shop, to Mr. Derrick, or to the customers, do you?

Answer. How is that?

Question. You do not know, personally, then, whether the bills that were made to individual customers, or the work that was per-

formed for individual customers, was billed directly to them, or to Mr. Derrick, do you?

Answer. They were billed, so far as I know, to them; yes, sir.

Question. To them?

Answer. Yes, sir.

Question. What is the basis of that, so far as you know?

Answer. What is the basis of that?

Question. Yes.

Answer. We just had a lot of billheads, "The Shade Shop," on them, "W. Stokes Sammons, 819 15th Street."

Question. "W. Stokes Sammons, Proprietor"?

Answer. Yes, sir.

Question. You are sure that it said "Proprietor" on those billheads and letterheads, are you?

Answer. I am most sure, sir.

Question. You said something in your testimony a while ago about all the stock, etc., there. I did not get the question clearly, nor the answer. What were your referring to?

Answer. The stock and everything was right in the place, there, up on the second floor front.

Question. To whom did it belong?

Answer. It belonged to Mr. Sammons, so far as I knew, because any time I wanted to open a piece of goods I asked Mr. Sammons about opening a piece of goods and he says, "Yes; take this piece."

Question. Is that the only reason you assign for your knowledge that it belonged to Mr. Sammons?

Answer. Because I was working for Mr. Sammons.

Question. Is that the only reason you assign for your knowledge of the fact that the stock belonged to Mr. Sammons?

Answer. Well, as far as I know, the stock did belong to Mr. Sammons.

Question. I ask you if those were the only reasons you assign for saying that the stock did belong to Mr. Sammons, that Mr. Sammons gave you orders to cut them, and told you to do this or that with them?

Answer. Yes, sir.

Question. You do not know whether it belonged to Mr. Sammons, as a matter of fact, or whether it belonged to Mr. Derrick, or whether Mr. Derrick purchased it, or whether Mr. Sammons purchased it?

Answer. Why, I guess it was purchased in the name of The Shade Shop. Those boxes came there with the stuff in them, "The Shade Shop."

Question. Who paid the bills?

Answer. Why, I couldn't tell you, sir, because a man would just drop the stuff on the sidewalk. He would not bring it upstairs. Many a day I went out of there and left it sitting on the sidewalk, because I didn't see it until 5.30, and then would have to bring it in.

20 Question. Did Mr. Sammons keep any regular books of account there while at 819 Fifteenth Street?

Answer. The only book I ever saw, sir, and the only book I had any business looking at, was the book that I put all the jobs that I cut in.

Question. Did you see any other kind of books around the place there that you might have believed resembled books of account?

Answer. No, sir; I wasn't interested in any other books.

Question. Would you be in a position to state positively whether or not he had kept books of account?

Answer. I couldn't say, sir. I don't know anything about that. He was running that end of it. I was running the work end of it.

Question. How about when he was on Eleventh Street? Did he have any books of account there?

Answer. Yes, sir.

Question. What did they consist of?

Answer. Why, he had a filing system and also a day book, jobs that I cut. Then he had a filing system in his desk that he kept locked.

Question. What was in this filing system—the accounts of customers?

Answer. I surmised that that was what it was, sir.

Question. Did he keep any books of account when he was on H Street?

Answer. He had that filing system and also that daily book, with all the jobs in that I cut, and every Saturday he would go by and check them off and make charges and collect the money.

Question. When you moved away from Mr. Derrick's what did you take away with you—not you, but I mean The Shade Shop?

Answer. What did The Shade Shop take away, Mr. Sammons and I?

Question. Yes.

Answer. We took one shade table, one sewing machine, one desk, one chair, one straightedge, a number of books——

Question (interposing). What kind of books?

Answer. Books that I marked down work for people and the day book, and Mr. Sammons had charge of other books. He had some books that I didn't have no right looking in, I guess.

Question. You just testified awhile ago that you never saw any books around there.

Answer. I said I didn't know what was in them.

Question. I thought you said you didn't see any other books around there.

Answer. I saw millions of books around there.

Question. Millions of them?

Answer. Yes; but I didn't know what was in the books. It was not my business to look to see what was in the books.

Question. What entries did you make in this daily book that you have reference to?

Answer. Just the same as—for instance, L. Stansbury wanted
81 four window shades. I put in there, "L. Stansbury," and the address, "4 window shades," and Mr. Sammons would mail the bill. You are an authority on that, sir; you know that.

Question. Then, when you made up the shades, would you check this order as being filled?

Answer. Yes, sir; and I would put it in the daybook, that order, and if there was any price on it; and that was all I had to do with it, unless I sent a bill out to somebody C. O. D., or the man came back and turned the money in to me. If I was not there, he turned it in to Mr. Sammons, and if Mr. Sammons was not there and I was not there he would keep the money until either one of us would come in.

Question. When you sent a bill out C. O. D., did you make it out from this daybook?

Answer. I put every order in the daybook that went out of the shop.

Question. Did you make out this bill from the daybook?

Answer. Yes, sir.

Question. This daybook is the only book you have any reference to. When you speak of the book, you refer to this daybook?

Answer. Yes, sir. We put all jobs in there that was cut, and if a C. O. D. went out of there, when the man brought the money back I would put right there on that order, "Paid, J. T. H.," and when Mr. Sammons was checking it off, on Saturday, he would come to me and say, "Well, you owe me so much," and I would also have a little piece of paper that I kept all the time, that Mr. Sammons didn't know anything about, to see if his account every Saturday would come to the same as mine.

Question. Now, Mr. Horigan, when Mr. Sammons was on Eleventh Street, we will say, the early part of the time that he was on Eleventh Street, did Mr. Derrick ever turn over to Mr. Sammons orders for making up any shades for Mr. Derrick's customers?

Answer. I couldn't say, sir.

Question. Did you ever see Mr. Derrick in the place of business while on Eleventh Street?

Answer. No, sir.

Question. You never did?

Answer. No, sir.

Question. Were you steadily employed by Mr. Sammons, the entire time he was on Eleventh Street? What I mean by that is were you away from there for any period of months?

Answer. I might have got tired of working and felt like I wanted to take a little rest, and taken a couple of months off, so I quit for a couple of months.

Question. Were any of those couple of months that you took off in the latter part of the stay on Eleventh Street?

Answer. Yes, sir.

Question. How many of them? Say, the last year that you were on Eleventh Street, how many times were you away from there?

Answer. I would say once.

Question. Only once?

Answer. Yes, sir.

Question. During the last year you were on Eleventh Street, with Mr. Sammons, you never saw Mr. Derrick in his place?

82 Answer. No, sir; I did not.

Question. Do you have any knowledge of any orders being filled for Mr. Derrick for his customers by the Shade Shop while on Eleventh Street? In other words, you never made any entries in this daybook for Mr. Derrick?

Answer. Then, why, I was doing most all the hanging; very little cutting on the inside. All I was doing was just measuring and hanging window shades.

Question. You took no orders?

Answer. I was very seldom on the inside.

Question. You took no orders for Mr. Derrick, on his place of business on Fifteenth Street?

Answer. No, sir.

Question. Now, Mr. Horigan, you testified that while at Twelfth and H Streets, Mr. Sammons had employed there, as I recall your testimony, in addition to yourself, five others?

Answer. Yes, sir.

Question. Do you mean collectively, or at different times? Were there five there at any given time, in his employ?

Answer. At different times.

Question. How many, in addition to yourself, were employed there steadily?

Answer. I remember one time it was two, besides myself.

Question. What was the average?

Answer. What was what?

Question. How many would you average there, in addition to yourself, during the time that you were there?

Answer. I remember one time, besides Mr. Sammons and myself, there was two other men there.

Question. I am speaking of an average. I am not asking for any given time.

Answer. Two other men.

Question. You would average two all the time, besides yourself?

Answer. Yes, sir.

Examiner DUNHAM. As I understood the witness, he said two other men besides himself.

The WITNESS. Two other men, other than myself and Mr. Sammons.

Examiner DUNHAM. That is what I understood him to say.

Question (by Mr. AHALT). Then, you had regularly employed there, generally speaking, four people, including Mr. Sammons and yourself?

Answer. Yes, sir.

Question. You are positive of that?

Answer. Why, not all the time, sir; business dropped down, and when business dropped down we had to lay a man off.

Question. Was there any time, of any considerable length, that no one was employed there other than yourself and Mr. Sammons?

Answer. When Mr. Sammons first went to Twelfth and H, I was the only one employed there.

Question. How long did that condition continue?

Answer. I couldn't say, sir.

Question. How long, approximately?

83 Answer. I couldn't say how long it was, sir. I don't know for sure.

Question. Did it continue a year?

Answer. I couldn't say for sure.

Question. Did it continue a month?

Answer. I couldn't say for sure.

Question. You could not approximate it?

Answer. No.

Question. It might have been the entire period you were there?

Answer. No, it was not. It was just for a short while.

Question. Now, you have said that there were signs; you described signs on the windows themselves at Twelfth and H Street, and you said there were other signs. What other signs were on the exterior of that store?

Answer. Well, right—besides the "Window Shades" and "The Shade Shop" signs on that place at Twelfth and H, up over the window, "Hooper & Klesner." Hooper & Klesner had signs, "Hooper & Klesner."

Question. Looking at this photograph, respondent's Exhibit No. 1, I will ask you to state whether or not those signs on the outside and over the show windows, "Hooper & Klesner, Painters; Wall Papers," are the signs that were on the building at that time?

Answer. Why, yes, sir. Those signs was on the building, "Hooper & Klesner; Painters and Wall Papers." That was on there at the same time as "The Shade Shop; Window Shades."

Question. Did Mr. Sammons's name appear anywhere on any of those windows?

Answer. I don't think so, sir, unless it was down in the corner of a window. I remember something being down there. I don't remember just what it was down here in the corner, of a window down here; something like that [indicating on photograph]. I don't remember. I am just saying I thought it was. None of those pictures was taken while Mr. Sammons was in the Shade Shop.

Question. I understand that.

Answer. You asked me about those signs. Let me ask you a question about those signs. Was this sign on the windows like that picture you showed me?

Question. No; I didn't ask you that.

Answer. No; but this sign was there [indicating], and that sign was there [indicating], and that sign was there [indicating], and where it says, "Window Shades, Shade Shop," it said, "Window Shades, The Shade Shop."

Question. When you say "this sign" or "that sign" and "that sign," you are indicating the name Hooper & Klesner over the center of the main entrance on the corner, and the words "Painters" on the left of the picture, and "Wall Papers," all of which appear across the top of the show windows?

Answer. Yes, sir.

Question. Now, Mr. Horigan, if the name "W. Stokes Sammons" had appeared anywhere on those windows, you, going in and out every day, would have seen it, would you not? Do you think you would have seen it?

Answer. I don't just remember.

84 Question. I ask you the question whether you think you would have seen it?

Answer. I guess I would have saw it.

Question. As a matter of fact, the main entrance to the workshop proper, in this storeroom, is located at the extreme right of this picture, is it not?

Answer. That is right, sir.

Question. And the position of the window to which you just referred, as being the location——

Answer (interposing). I didn't say it was on there for sure.

Question. Just a minute. Let me finish my question. The position of the window to which you just referred as being the location on the window where Mr. Sammons' name might have appeared, is immediately near that entrance to which I have referred, is it not?

Answer. I don't know for sure whether his name was on that window or not.

Examiner DUNHAM. Mr. Witness, he asked you a question.

Mr. AHALT. Read the question, please.

(The reporter read the question referred to, as above recorded.)

Mr. HAWKINS. I will object to it, because he is asking him if it might have appeared there. The witness said repeatedly that he does not know and he would not say for sure. The question of whether it might or might not have been there is purely incompetent.

Mr. AHALT. The witness testified, while indicating this position to which I have referred on this window, that Mr. Sammons' name might have appeared at that point on that window. Now, I am asking this witness if that position which he indicates on this window is not immediately adjoining the door to which I have referred. I think it is strictly proper.

Mr. HAWKINS. I beg your pardon. I did not understand. That is quite proper, if that is what you mean.

Mr. AHALT. He is in a position to answer whether or not that is correct.

Mr. HAWKINS. I will withdraw my objection.

The WITNESS. That is not the picture of all the letters that was on there.

Examiner DUNHAM. Mr. Witness, can you answer the question now? He asked you if the place where this man's name might have appeared was not right close to the place where you entered the building.

The WITNESS. I don't know for sure, sir.

Question (by Examiner DURHAM). Do you know whether or not that place you have indicated, where his name might have appeared, was close to the entrance? That is the question he is asking you.

Answer. I don't remember. I remember something being on the window, but I don't remember what it was.

Question. He has not asked you what was on the window. He has asked you if the place that you indicated, where Mr. Sammons' name might have appeared, if it appeared at all, was right close to the place where you entered the building, the main entrance?

Answer. There is the main entrance right there [indicating]. There is the entrance to the shop [indicating.]

85 Mr. AHALT. I think the witness thoroughly understands this question. He indicated right here on this photograph that if Mr. Sammons' name appeared, it appeared there. I asked him whether or not that point, on that window, is not immediately adjoining the door entering his workshop.

The WITNESS. Sure.

Mr. AHALT. And he says now he can not answer.

The WITNESS. Yes; that is adjoining there. That point on the window is right close to the door.

Question (by Mr. AHALT). You were going in and out that door dozens of times every day?

Answer. Yes, sir.

Question. You testified that Hooper & Klesner had never engaged in the making up of window shades. I want to ask you whether or not The Shade Shop of Mr. Sammons' ever filed orders for window shades to be made up for his customers at time prior to the time that Mr. Sammons moved into the premises at Twelfth and H Street?

Answer. Did Mr Sammons ever make up any orders for Hooper & Klesner?

Question. Yes.

Answer. Before they moved to Twelfth and H? Before Klesner and Sammons moved to Twelfth and H?

Question. Yes.

Answer. Yes, sir.

Question. Did they have very many such orders?

Answer. No, sir.

Question. Were you employed principally then in making up or filling these orders, such as cutting the shades, etc.?

Answer. Yes, sir.

Question. Did you have information, when you were cutting the shades, as to the customer for whom they were being made up?

Answer. Why, every job would always have a name on it.

Question. Could you approximate how many orders you would have in a week or a month from Hooper & Klesner?

Answer. I might get—that was pretty hard to tell. At one time there I was doing a lot of work. We were doing a lot of work for Hooper & Klesner.

Question. Where was that?

Answer. That was up in the Farragut Apartment.

Question. Where were you located at that time?

Answer. 724 Eleventh Street; also Twelfth and H.

Question. Did Hooper & Klesner send orders for shades to be placed in many of these larger buildings, such as apartment houses, office buildings, or anything of the kind?

Answer. Did they send them?

Question. Yes; with reference to these orders you filled for Hooper & Klesner, were many of them for shades in the Farragut, or the Kensington, or Leamington, or other apartment houses, or office buildings?

Answer. Yes, sir; all the work you used to give him, he used to give to Mr. Sammons.

86 Question. Do you have any knowledge of having filled any orders for Hooper & Klesner for the Wagonhurst Estate?

Answer. Yes, sir.

Question. They had a considerable business, did they not?

Answer. Yes, sir.

Question. Did you ever see any advertising matter in the newspapers by Hooper & Klesner, advertising "Shade Shop, Hooper & Klesner," or "The Shade Shop"?

Answer. When?

Question. At any time after Mr. Sammons left Twelfth and H Streets.

Answer. Did Hooper & Klesner advertise "Shade Shop"?

Question. In the newspapers; yes.

Answer. Why, I don't remember, sir, whether they did or not. I never took that much interest in Hooper & Klesner to look.

Question. Did you take enough interest in what you read to have observed any such thing in the newspapers?

Answer. I form my opinion myself. Of course, I never looked at that. I never spoke to this man Klesner——

Question (interposing). I didn't ask you whether you ever spoke to anybody.

Answer. I never looked to see. Things like that didn't worry me.

Question. The question I asked you is whether or not you have any recollection of ever having seen in the newspapers any advertisement by Hooper & Klesner, as "Shade Shop," as well as the window-shade business.

Answer. I don't remember.

Question. I believe you stated you went down there to move things out of Twelfth and H Streets and into 733 Twelfth Street on Sunday morning?

Answer. Yes, sir.

Question. Why did you select that day?

Answer. The men could not go out and work on jobs on Sunday. People would not allow them to come to the house and hang window shades on Sunday, and we just paid the men extra for working one day and moved on Sunday, which didn't handicap the business.

Question. Did you expect to find Mr. Klesner there?

Answer. Why, he was down there very often on Sunday. It was nothing unusual to see Mr. Klesner down there on Sunday.

Question. You expected to see him there, didn't you?

Answer. Sure.

Question. Your going down there on Sunday was not for the purpose of getting your stuff out of there during his absence?

Answer. No, sir; because we didn't take anything but just what belonged to The Shade Shop.

Question. Going back a step, I do not believe I finished my inquiry about what you took away from Mr. Derrick's place. Did you take any stock of shades, rollers, or sticks?

Answer. No, sir.

Question. You didn't take any?

Answer. No, sir.

Question. At the time you first attempted to erase these letters "The Shade Shop" from the windows had all the fixtures been moved out of the place at that time into 733 Twelfth Street?

87 Answer. All the fixtures?

Question. Yes, sir; your benches and tables and things of that kind.

Answer. The benches, tables, and the sewing machine and desk—we took the big stuff out first.

Question. Then the gun was not drawn on you until all those things were out?

Answer. That is the idea, sir. The gun was not drawn on us until a couple of sample window shades that I had made and hung up on two screw-eyes in the ceiling of the window—and I got up on the stepladder to get them down, and also while I was up on the stepladder—because those sample shades were no more good, I was going to take them and drop them down on the floor. They were all dirty. I also had that safety razor blade in my hand to scrape the signs or painted letters off the windows.

Question. Had you and Mr. Klesner or Mr. Sammons and Mr. Klesner, had any words or any altercation prior to that time you attempted to climb up there?

Answer. No, sir.

Question. The moving of the fixtures, etc., had been agreeable, then, up to that time?

Answer. So far as I know it was, sir.

Question. What was said to you, or by Mr. Sammons, when you attempted to scratch these letters off the window the first time?

Answer. Mr. Sammons says, "Well, Pat, we will take these sample shades down, and we will take the signs off the windows," so I got a ladder and put it over there, and I was going up the ladder, and, of course, I never said a word. I was going up the ladder, and Klesner opens the door and he pulls a gun out, and he says, "Get down off the ladder or I will shoot you." There was nothing for me to do but step down.

Question. After this police officer came and asked Mr. Klesner to show him the gun, did you see it?

Answer. Yes, sir.

Question. Was it a real gun or just an imitation?

Answer. It looked like a real gun to me. If I had thought that it was not a real gun——

Question (interposing). Did you examine the gun at that time?

Answer. No, sir; the police took it in his hands.

Question. Did you see the police officer examine it as to whether it was a workable gun?

Answer. Yes, sir.

Question. What did the examination disclose; that it was or was not a workable gun?

Answer. The examination disclosed to me that there was something that would fill you up. It was a real gun.

Question. Was it loaded.

Answer. It was not loaded then, no sir, when the police examined it, but as I say, in the meantime when Mr. Sammons had telephoned for that police, Mr. Klesner, he gets up from at this desk and he takees that gun around back of the screen with him. You know what that called for.

88 Question. When Mr. Klesner left with the policeman and went to the station house, I wish you would state how you gained entrance into the storeroom again.

Answer. How we gained entrance into the storeroom?

Question. Yes.

Answer. Mr. Sammons and I always had a key for the door at 741 Twelfth Street. I think that was the number. After we went down to the station house and made a report of it to the captain on duty there, why, he says, "All right; you fellows can go now"—that was Mr. Sammons and I. Then, we came on back, on up Twelfth Street, and we went in the shade shop.

Question. How did you get in?

Answer. Took a key and opened the door.

Question. Was the door barricaded in any way on the inside?

Answer. Not as I know of, sir.

Question. Did you have to use any force to get it open?

Answer. No, sir.

Question. You are sure of that?

Answer. Well, yes, I am sure of that.

Question. You are sure it was not nailed up from the inside?

Answer. Yes, sir; it was not nailed up.

Question. Did you enter ahead, or behind Mr. Sammons?

Answer. Well, I was just—I don't just remember, sir.

Question. Did you put the key in the door, or did Mr. Sammons put in the key in the door and opened it?

Answer. I don't know which one of us put the key in the door.

Question. You don't know whether it was barricaded or not?

Answer. I know it was not barricaded.

Question. How do you know that?

Answer. Because, as soon as we put the key in the door, the door opened.

Question. Did you put the key in the door?

Answer. I don't remember which one of us did, but we just walked in, just the same as we walked in any other time, put the key in the door, turned the key, and the door opened.

Question. When did you obtain this ammonia to take these signs off? Was it before you went there the first time, or between the first and second time?

Answer. When we found out that the safety razor blade and the shade knife that we had would not take the signs off the windows, Mr. Sammons, I think, sent one of the men that was working there then over to the drug store, and got 10 cents worth of ammonia.

Question. Did you do any damage to the parquet flooring in these windows in taking those signs off?

Answer. No, sir.

Question. Was there anything said by Mr. Klesner about the possibility of doing so?

Answer. No, sir.

Question. You are positive of that?

Answer. Mr. Klesner was not there then.

Question. I am speaking of the time prior to that.

Answer. No, sir.

Question. Did you ever see the parquet floors after the signs were taken off?

89 Answer. Yes, sir.

Question. Were they in any damaged condition?

Answer. No, sir; the only thing that was on those floors when we took the sign off was when we scraped off the painted letters, why, that dry paint fell down on the floor, and you could take a broom and sweep that off; in fact, I think we did that, took a broom and

swept it up, and left it clean. We had a bailer in 738, and we took all the trash and put it in the bailer.

Question. You are positive that you cleaned it up afterwards?

Answer. Yes, sir.

Question. I show you commission's Exhibit No. 10, and ask you to state whether or not that is the style of stationery used by The Shade Shop while in business at 819 Fifteenth Street?

Answer. Yes, sir.

Question. They used billheads similar to that?

Answer. Yes, sir.

Question. Did they have "W. Stokes Sammons, Manager" on them?

Answer. Yes, sir.

Mr. AHALT. That is all.

Redirect examination by Mr. HAWKINS:

Question. Mr. Horigan, this respondent's Exhibit No. 1, which Mr. Ahalt has questioned you about, which is a photograph of the premises at Twelfth and H Streets there, does not represent the condition of the signs on the windows and the building as they were at the time Mr. Sammons was occupying part of the premises, does it?

Answer. No, sir.

Mr. AHALT. We do not contend that it does.

Mr. HAWKINS. I wanted to get that straight.

Question (by Mr. HAWKINS). Now, this Sunday morning when you got up on the stepladder, as you have told us, and Mr. Klesner came in and pulled a gun on you, you said something to Mr. Ahalt about him going behind the screen?

Answer. Yes, sir.

Question. How long was it, would you say, from the time he pulled the gun on you until the policeman came there?

Answer. Only about a minute, sir.

Question. What?

Answer. About a minute. The police got there awful quick.

Question (by Examiner DUNHAM). Were you glad of it?

Answer. Yes, sir.

Question (by Mr. HAWKINS). You had to go out of the building and telephone?

Answer. Yes, sir; as soon as he backed me out the door, see. Of course, as soon as he pulled the gun, Sammons was out the door first. I was up on the ladder. I had to get down off the ladder. Of course, I had to get down off the ladder. He had a gun and the gun was looking right at me, and I was up on the ladder and I didn't make any break to get down quick because I thought he might think that I was going to jump on him.

Question. When you were up on the ladder, do you know whether or not the gun was loaded?

Answer. I thought it was, sir.

90 Question. Did you know? Did you have a chance to examine it then?

Answer. No, sir.

Question. You didn't stop to examine it?

Answer. I would like to have had a chance to examine it, though.

Question. Now, between the time when he pulled the gun on you and the time when the police arrived, where was Mr. Klesner?

Answer. Between the time that he pulled the gun on me?

Question. Yes.

Answer. Where was Mr. Klesner?

Question. Yes.

Answer. He pulled the drawer out like this [indicating], and put the gun in, and Sammons backed out the door first, and I was up on the ladder, and I got down off the ladder, slow, watching him at the same time, and I says: "Telephone for the police," and he runs over to the drug store and telephones for the police. He had telephoned for the police while I was getting down off the ladder and backing out the door.

Question. Where was Mr. Klesner all this time?

Answer. He was getting up from his desk. He got up from his desk after he got the gun, and pointed it at me. I was up on the ladder, and as I was getting off the ladder he was edging around the desk, and as soon as I backed out the door, he took the door and locked it. In the meantime Sammons had run over to the drug store and telephoned for the police, and as soon as he locked that door he comes around the desk again and goes around back here [indicating] to a screen—behind a screen.

Question. Where was the gun when the policeman came?

Answer. Klesner had come from behind the screen and set down at the desk, took the gun out of his pocket and put it back in the drawer.

Question. When you moved from Twelfth and H Streets, there to two or three doors south, what all did you take? Did you take any stock?

Answer. Took everything that belonged to Mr. Sammons.

Question. What was it that did belong to Mr. Sammons?

Answer. Shade table, straightedge, sewing machine, desk, chairs, rollers, hammers——

Question (interposing). Any stock?

Answer. Yes, sir; shade material; and in the whole time that we were taking that out, Mr. Klesner was just as pleasant as he could be.

Question. Now, during the time that you were there on Fifteenth Street——

Answer (interposing). Yes, sir.

Question (continuing). Occupying the second floor there, Mr. Derrick was also in the building?

Answer. Yes, sir.

Question. You told Mr. Ahalt about Mrs. Scott that was there?

Answer. Yes, sir.

Question. Did you ever hear it claimed by Mr. Derrick or Mrs. Scott, or anybody there, that Mr. Derrick owned The Shade Shop?

91 Answer. No, sir.

Question. And that Mr. Sammons was working for him?

Answer. No, sir.

Question. After you left Fifteenth Street and went down to Twelfth and H, did Mr. Derrick continue in the shade business?

Answer. He put his nephew up there to start a shade business. He had never made a window shade in his life.

Question. He started, then, to make shades?

Answer. Yes, sir.

Question. Did he use any signs at all?

Answer. Yes, sir.

Question. How did he advertise himself?

Answer. Derrick's Shade Shop.

Question. Where was the sign?

Answer. The sign was between the—there was three windows on the second floor, just the same as this, a window here, a window here, and a window here [indicating]. Then, there was a little space. Between there he had a very small sign, there [indicating] and here [indicating]. He had two little signs, "Derrick Shade Shop."

Question. That was the first time he had ever manufactured shades?

Answer. He had a Ford automobile that had "Derrick Shade Shop" on the doors of the Ford runabout.

Question. Did he use the sign "The Shade Shop" in any way in connection with that business that his nephew was running?

Answer. No, sir. He used the name "Derrick Shade Shop." He had a little sign to put on the machine and take off the machine, because I used to see Milton going around riding at night, and he wouldn't have the sign on the machine.

Mr. HAWKINS. That is all.

Recross-examination by Mr. AHALT:

Question. When Mr. Sammons moved from Twelfth and H Street, what business did he engage in at 733 Twelfth Street?

Answer. Mr. Sammons engaged in the business of manufacturing window shades.

Question. What other business was conducted in that same storeroom, as occupied by Mr. Sammons?

Answer. Mr. Mann started a paper-hanging business.

Question. What else besides paper-hanging?

Answer. Paper-hanging and painting, as far as I know.

Question. Painting, you say?

Answer. Paper hanging and painting.

Question. Was Mr. Mann engaged in business prior to that time?

Answer. Yes, sir.

Question. Where?

Answer. The Cornell Wall Paper Co.

Question. Was he ever in business for himself before?
Answer. Yes, sir.
Question. Where?
Answer. At 916 Twelfth Street.
Question. How long prior to the time he came with Mr. Sammons?
Answer. Before he came with Mr. Sammons?
Question. Yes.
92 Answer. Why, before he came to work for Mr. Sammons—just before he came to work for Mr. Sammons.
Question. Under what name did Mr. Mann trade there?
Answer. Trade where?
Question. At 733 Twelfth Street.
Answer. Mr. Mann, he traded under the name of "The Decorative Shop."
Question. Did he have that name on the windows?
Answer. Yes, sir.
Question. Did they have an automobile in connection with the business there at 733 Twelfth Street?
Answer. Did they have an automobile?
Question. Yes.
Answer. For The Decorative Shop?
Question. Yes.
Answer. Yes, sir.
Question. How was that lettered, or what sign was on it?
Answer. "The Decorative Shop."
Question. Is that all that was on the machine?
Answer. Yes, sir; only one time the machine broke down and they had to use one without no letters on it.
Question. Did The Shade Shop have an automobile delivery?
Answer. Yes, sir.
Question. What did they have on that?
Answer. "The Shade Shop, W. Stokes Sammons, Proprietor, Exclusive Manufacturers of Window Shades, 733 12th Street."
Question. Anything else?
Answer. Telephone.
Question. Did they have anything about decorative shop?
Answer. No, not as I can recall.
Question. Was all this business of The Shade Shop and The Decorative Shop conducted in this one storeroom?
Answer. Of course, The Decorative Shop—their business was mostly all—their stock, and everything, was kept in the cellar.
Question. Did you have much stock on display in their storeroom?
Answer. In the office?
Question. We will say the front part of that storeroom.
Answer. I don't remember. They had a little bit. They had some books.
Question. Did you or Mr. Sammons have anything to do with the taking of orders or the business of The Decorative Shop?

Answer. Did Mr. Sammons or I?

Question. Yes.

Answer. Why, the only reason I done that was I take orders for anybody if they come in there; and if somebody comes in and asks for Mr. Mann, and Mr. Mann is not there, I say, "Mr. Mann is not here right now; can I do anything for you?" I think Mr. Mann, if he was running that paper-hanging business, if anybody came in to see me about window shades, or came in to see me personally, he would try to give him fully as much information as he could, and he would try to find out who was looking for me.

Question. If anyone came in, without asking for Mr. Mann——

93 Answer (interposing). If they asked, "Is this The Decorative Shop?"

Question. If they asked about wall paper, or painting, would you wait on them?

Answer. I would call Mr. Mann.

Question. Suppose Mr. Mann was not there. Would you wait on them?

Answer. No, sir.

Question. You would let them go out?

Answer. Yes, sir.

Question. Then you do not take orders if people come in?

Answer No, sir; because I don't know that much (snapping fingers) about paper hanging and painting.

Question. How long did Mr. Mann stay there at 733 Twelfth Street, conducting the business of paper hanging and painting?

Answer. Mr. Mann stayed there—ran the paper-hanging end for awhile, and then he picked up a man by the name of Mr. Jesse Dunn, and Mr. Jesse Dunn got a good idea of how to run the paper-hanging business, and they both worked it together.

Question. Mr. Mann, I believe, advertised under this Decorative Shop, as "J. C. Mann, Manager," did he not?

Answer. I couldn't tell you, sir, exactly.

Question. You were right there in the building. Didn't you see that on any of the signs?

Answer. I was not interested in Mr. Mann's paper-hanging business. That is something I never mingle with—the paper-hanging business.

Question. You don't know whether he was the manager, then, or the proprietor?

Answer. I really could not say, sir; but Mr. Mann had all the say in The Decorative Shop, because Mr. Mann, I think, knew enough about paper hanging and painting, and there was nobody else in there. Mr. Sammons was there, and I was in there, but Mr. Sammons and I, we don't know anything about paper hanging and painting.

Question. Then, you did not know whether Mr. Mann was the proprietor or not?

Answer. So far as I know, Mr. Mann hired men and paid them off, and when a man does that he is proprietor of a place, I guess.

Question. Doesn't a manager do that same thing in business, as a general proposition?

Answer. Yes, sir; he does the same thing, but I know I heard Mr. Mann say about how much money he made, and how much money he got off a certain job, and things like that. I don't think Mr. Mann, if he was just manager, and possibly working for $25 a week, would be talking about having made so and so on one job, or another job, because Mr. Mann carried on that kind of business at 916 Twelfth Street at one time that I know of.

Question. Mr. Horigan, as an experienced shade man who has been in the business the length of time that you have, what distinction do you say there is in the names "Shade Shop," and a place advertising "Window Shades" on the window, so far as it might relate to the character of business conducted on the premises?

94

Answer. What is my opinion?

Question. Yes.

Answer. Well, my opinion of it was that Hooper & Klesner, the firm of Hooper & Klesner, was getting the orders for these shades.

Question. I think you have got the wrong idea of the question. It is hardly responsive, to say the least. Will you read the question, please, Mr. Reporter?

(The reporter read the last question, as above recorded.)

The WITNESS. What do you mean by "distinction"?

Question (by Mr. AHALT). What difference, I mean? If you saw a store that had "Window Shades" on it, and then you saw another store that had "Shade Shop" on it, would you consider that there was any difference in the character of business that was being conducted there?

Answer. Well——

Mr. HAWKINS (interposing). I am going to object to that. I think that is entirely irrevelant and immaterial to any issue in this case. The question here is the appropriation of a trade name. This witness here can tell the facts, and the commission will have to decide whether somebody appropriated the trade name, or whether the name had any value or not. I do not think this witness can qualify as an expert on the law of unfair competition, which necessarily must follow if he is going to answer this question. In other words, he seeks to qualify him and have him give his opinion as to what is, or what would or would not amount to unfair competition in violation of section 5 of the commission's act. I say the witness can not do that. I say that it is entirely incompetent, irrelevant, and immaterial, and ought not to go into the record.

Mr. AHALT. A responsive answer to that question would not be calling upon the witness for any interpretation of law or anything other than an opinion, which he has already qualified to give. The question as to whether or not this is a trade name might well be considered at a later time as a question that is relevant or not.

Examiner DUNHAM. The objection is in, now, Mr. Witness, and you may answer, please, if you can. Do you remember the question?

Mr. HAWKINS. I think the witness said he did not understand. If you do not understand it, say so.

Mr. AHALT. He did not say that as to the last question.

The WITNESS. I ask you what you mean by the words you use. I do not understand the question.

Mr. AHALT. Let the stenographer read the question.

Examiner DUNHAM. Read it, please, sir.

(The reporter again read the question as recorded above.)

The WITNESS. The chances are I would go in the place that had "Window Shades" if I was merely looking for window shades. If I was looking for The Shade Shop, I think I would go in the place marked "Shade Shop." If I was looking for The Shade Shop and saw a place marked "Shade Shop," I might go in that place, thinking I was going in The Shade Shop. But if I was simply looking for window shades, I would go in the place marked "Window Shades."

95 Question (by Mr. AHALT). I didn't ask you where you would go. I asked you what difference there would be, if any, in the character of business conducted in that place.

Answer. What do you mean by "what difference there would be, if any"?

Mr. AHALT. I think the witness understands the question.

The WITNESS. I really do not understand you.

Mr. HAWKINS. I do not understand you either. I am with the witness.

The WITNESS. I really do not understand what you mean.

Examiner DUNHAM. The witness claims that he does not understand it. Would you be kind enough to clarify it so that he may understand it?

Question (by Mr. AHALT). Mr. Horigan, do you consider that the business conducted by a firm or person advertising as a shade shop is any different in character from that conducted by a firm or a person under the name of "Window Shades"?

Mr. HAWKINS. I am going to object to that, as calling, of course, for an opinion and conclusion upon a matter where he does not state any facts upon which the witness could base an opinion or conclusion. He states no facts as to the character of the business or any of the surrounding circumstances. That is clearly an improper question.

Examiner DUNHAM. The objection is in, Mr. Witness. Will you give him an answer, if you can?

The WITNESS. I really do not know what he is trying to get at. I will answer any question if he puts it to me squarely, but when he talks about a place called "Shade Shop," and "The Shade Shop," if somebody was going along looking for "The Shade Shop," and they saw a place on the corner, my opinion is that they would go in the shade shop, thinking that they were going in The Shade Shop. if that is what he is getting at.

Question (by Mr. AHALT). If you want to continue the inquiry further, I will endeavor to continue it. You have satisfactorily answered the inquiry.

Answer. What do you mean by the character of the business?

Question. What is the character of the business conducted by The Shade Shop?

Answer. Manufacturing window shades.

Question. What do you mean by manufacturing window shades?

Answer. Making them.

Question. What do you mean by making them?

Answer. Well, putting them together, assembling them, taking the roller and putting it on a piece of cloth that has been measured and cut to size.

Question. The question as to what "making them" means seems to be rather dense. I will ask you whether or not, by "making them," you mean that you cut the material to the desired measurements and equip the material with rollers and sticks, pull-cords, etc.?

Answer. Yes, sir.

Question. That is what you mean by manufacturing or making window shades?

Answer. Yes, sir.

Question. And that is what you mean by the business conducted by The Shade Shop?

96 Answer. Yes, sir.

Question. Do all persons who advertise window shades, so far as your knowledge goes, make up and manufacture shades in that sense?

Answer. Well, as far as my knowledge goes, of course, I know that they do not all do it, but they claim they do it.

Question. Leaving this entire controversy out of the question, as presented here, with your knowledge of the shade business, if you were seeking to have shades made to order, would you be likely to seek out a place advertising the manufacture, or a shade shop, or one that advertised merely window shades?

Mr. HAWKINS. I object to that on the same grounds as my other objections.

Examiner DUNHAM. Now, you may answer it, sir.

The WITNESS. Why, I would go around and see what each man has got for sale, and get his price on it. If I was looking for some window shades, I would go in there. If the sign "Window Shades," or "Shade Shop" drew my attention and I went in there and if that man's price is low, I may get the shades from him, if he shows me the stuff, and I know what it is I am getting. I would buy the window shades of him.

Question (by Mr. AHALT). From your experience and knowledge, then, would you say that most concerns that advertise merely window shades have stock sizes and ready-made shades, or not?

Answer. A lot of them do, and a lot of them do not have them. Getting to that question, when Mr. Klesner was in partners with Hooper & Klesner on Eleventh Street, in the basement, they never handled a window shade, but they did window shade work; but The Shade Shop done the window shade work for Hooper & Klesner.

Question. They made them and sold them to Hooper & Klesner?

Answer. Sure; and Mr. Sammons sent Hooper & Klesner a bill, and then Mr. Hooper and Mr. Klesner would add on their bit, and send the bill to the other people.

Question. At that time they only advertised window shades?

Answer. They were doing painting and paper hanging. That was on Eleventh Street.

Question. Did they have anything about window shades on their letterhead?

Answer. I don't know; I never saw their letterhead. I never had very much to do with that, of course. I didn't know them very well. I only know that the jobs would come in, a job for Hooper & Klesner.

Question. You can buy window shades at almost any of the department stores here in town, can you not?

Answer. A good many of them.

Question. Stock sizes?

Answer. Yes, sir.

Question. Comparatively few department stores make up window shades to fit desired measurements?

Answer. A good many of them, sir.

Question. Would you say that more sell the stock sizes than make them up?

Answer. You take a lot of these—you say "department stores." If you figure the big department stores, they make shades to
97 order; but you go along M Street in Georgetown, and every one of those furniture places, although they are not department stores, have stock window shades made up. You go up Seventh Street, above M, and in those little Jew stores they have all got window shades made up.

Question. There are a great many stores that sell stock sizes of window shades, and advertise such? They do not make them up?

Answer. Yes, sir; a good many stores advertise window shades who do not touch a window shade. They have not even got samples, such as Hooper & Klesner, when they were on Eleventh Street in the basement. I don't know whether they ever had a sample book, because we went out and measured the job, and got the color, and everything for them, and sent them an estimate.

Question. You don't know that they did not have, do you?

Answer. Well, I hardly think they did, because many a time Mr. Hooper, he came over and asked me for samples. He wanted to take them out and show them to people. Mr. Hooper was one of the most pleasant men I ever met, and I was glad to wait on him any

time he came in. You asked me about window shades, see. You know how that game is worked.

Question. Yes; I know something about it.

Answer. You gave them orders many a time, and you thought they were doing the work; but instead of that, The Shade Shop was doing the work for them.

Question. So that there is a distinction between a person who actually makes the shades, and one who conducts the business, merely, of selling shades?

Answer. This firm of Hooper & Klesner, at Twelfth and H Streets, have hired a practical man there.

Question. That is not in response to my question. I say, then, that there is a difference between a place that makes up shades, or a shade shop, and a place that merely sells window shades?

Answer. Well, the general public don't know that.

Question. They do not?

Answer. No, sir.

Mr. AHALT. That is all.

Mr. HAWKINS. That is all.

(Witness excused.)

Mr. HAWKINS. The witness, John M. Henderson, who testified yesterday, returned this morning in response to the request of Mr. Ahalt and brought with him certain papers in connection with the settlement of his account with The Shade Shop, when it was located at 819 Fifteeenth Street, concerning which he testified yesterday. Let the record show that Mr. Ahalt offers in evidence respondent's Exhibits 3, 4, and 5, the same being as follows:

Exhibit 3 is a check drawn by Mr Henderson under date of August 28, 1914, for $35, payable to Luther L. Derrick and indorsed by Luther L. Derrick, and Luther L. Derrick Co.

Respondent's Exhibit 4 is a bill under date of May 12, 1914, Shade Shop, Creditor, to Mr. John Henderson, 2nd Street, showing a balance of $35.

Respondent's Exhibit No. 5 is a bill under date of August 26, 1914, from Luther L. Derrick, Creditor, to John M. Hender-
98 son, Debtor, for $35, as balance due, the same being marked "O. K., The Shade Shop, per W. Stokes Sammons, Pro."

(The papers referred to were received in evidence, marked, respectively "Respondent's Exhibits 3, 4, and 5" and the same are forwarded herewith.)

It is now stipulated between counsel for the commission and counsel for the respondent that this check was given in payment of the balance of this bill, $35, and that the pencil memorandum upon respondent's Exhibit No. 5 is an assignment of the same by Mr. Sammons to Mr. Derrick.

Mr. AHALT. I might add there that such assignment was Mr. Sammons's, as was requested by Mr. Henderson, as he testified.

Mr. HAWKINS. This was the assignment from Mr. Sammons to Mr. Derrick, to which Mr. Henderson referred in his testimony yesterday. That is my understanding of the facts.

I want to offer commission's Exhibits Nos. 14 to 29, inclusive.

(The papers referred to were received in evidence, marked respectively, "Commission's Exhibits Nos. 14 to 29, Witness Henderson" and the same are forwarded herewith.)

Mr. HAWKINS. Let the record show that the witness Henderson also produced certain bills previously rendered to him by The Shade Shop, which have been marked "Commission's Exhibits Nos. 14 to 29, inclusive," which were received by him in the course of his business with Mr. Sammons, trading as The Shade Shop.

That is all I have at the present time. I will have one more witness.

(At this point followed discussion of the record, at the conclusion of which the following occurred:)

Examiner DUNHAM. We will take a recess until 1.30 p. m.

(Whereupon at 12 o'clock noon, a recess was taken until 1.30 o'clock p. m.)

AFTER RECESS

The hearing was resumed at 1.30 o'clock p. m., pursuant to the taking of recess.

Examiner DUNHAM. You may proceed, gentlemen.

W. STOKES SAMMONS was called as a witness on behalf of the commission, and after having been first duly sworn, testified as follows:

Direct examination by Mr. HAWKINS:

Question. Now, Mr. Sammons, what is your business, please?

Answer. Manufacturer of window shades.

Question. Do you do anything other manufacturing?

Answer. No, sir.

Question. Don't you sell them?

Answer. Yes, sir.

Question. So you are manufacturing and selling them?

Answer. And selling them.

Question. How long have you been engaged in the business of manufacturing and selling window shades?

Answer. Since 1901.

99 Question. Now, will you start and tell us at the beginning where you started, when it was, and any and all trade names that you had when you began, and come down to date? In 1901 where were you engaged in business?

Answer. In 1901 and 1902 I was engaged in business at 910 E Street NW.

Question. That is in the city of Washington?

Answer. In Washington.

Question. Did you own the business then or were you working for somebody?

Answer. I absolutely opened and owned the business.

Question. Did you go under a trade name or how did you trade?

Answer. I originally started The Shade Shop.

Question. Was that in 1901?

Answer. 1901.

Question. How did you use the name The Shade Shop; describe your advertising method, if you had any.

Answer. I always had The Shade Shop where I had a bay window. I would have The Shade Shop on the main plate glass and on the side glass I would have Window Shades. Where I did not have the side windows I would always have just The Shade Shop on it, and at 910 E Street I had a little board sign with raised letters, The Shade Shop, over the doors as you entered.

Question. At that time, in 1901, that was on E Street?

Answer. 910 E. Street.

Question. Did you do any advertising in any newspapers or magazines or publications of any kind?

Answer. Yes; I have always advertised in almost every publication; offered my advertisements in Catholic publications and union publications.

Question. Which ones did you advertise in at that time?

Answer. I could not say positively which ones.

Question. Was it newspapers or magazines?

Answer. Oh, yes; I advertised in newspapers.

Question. How did you advertise?

Answer. Just "The Shade Shop, Exclusive Manufacturers of Window Shades." I never had a price in my life until the last three weeks.

Question. Did you have a telephone at that time?

Answer. Yes, sir.

Question. How were you listed in the telephone directory, if you know?

Answer. Always had two listings, "The Shade Shop, Window Shades." Then, I always had "W. Stokes Sammons, Window Shades."

Question. Now, that was true in 1901?

Answer. 1901 and 1902.

Question. On E Street, where you started?

Answer. Yes.

Question. Where did you keep your bank account then?

Answer. I kept my bank account at the Second National Bank.

Question. In whose name did you keep the bank account?

Answer. W. Stokes Sammons.

100 Question. How did you sign the checks?

Answer. W. Stokes Sammons.

Question. Did you have any delivery wagons or automobile trucks at that time?

Answer. No, sir.

Question. Where were your customers located; in Washington or outside of the District?

Answer. Washington and vicinity; Hyattsville, Riverdale, Alexandria, and such places that I could get business from.

Question. How long did you stay there at that place on E Street where you commenced in 1901?

Answer. I was there during 1901 and 1902.

Question. Where did you go from there, Mr. Sammons?

Answer. I went to 1649 K Street; the corner of Seventeenth and K, but the number is 1649, northeast of Seventeenth and K.

Question. Here in the city of Washington?

Answer. Yes, sir; in the city of Washington.

Question. What did you do there?

Answer. The same business, the manufacturing of window shades, and sold window shades.

Question. Did anybody have any interest in your business?

Answer. Nobody had any interest in my business.

Question. What about the trade name that you used?

Answer. The Shade Shop painted on the wall. I did not have any street windows.

Question. How did you have your signs there at that time?

Answer. Painted on the wall.

Question. On the inside or the outside?

Answer. On the outside.

Question. What was it?

Answer. "The Shade Shop, Exclusive Manufacturers of Window Shades."

Question. Did you carry a bank account at that time?

Answer. I can not say—yes, I carried a bank account at that time, I am positive, at The National Savings & Trust Company.

Question. Under what name?

Answer. Fifteenth and New York Avenue.

Question. What name?

Answer. W. Stokes Sammons.

Question. How did you sign your checks?

Answer. W. Stokes Sammons.

Question. Did you have a telephone then?

Answer. No, I did not have a telephone then.

Question. Did you have any delivery wagons or automobile trucks?

Answer. No, sir.

Question. What advertising did you do, if any; what was the nature of it?

Answer. I advertised three months in the spring and three months in the fall.

Question. Where and how?

Answer. In the newspapers.

Question. Washington newspapers?

101 Answer. In the Washington newspapers.

Question. Did you do any other advertising than newspaper advertising?

Answer. Yes; I advertised in some labor magazines, labor directory, just some union-labor directory. I do not know what it was.

Question. What were your billheads and letterheads?

Answer. Always, The Shade Shop.

Question. Was true when you started in 1901?

Answer. I always had, "The Shade Shop, W. Stokes Sammons, Manager."

Question. Where did you go from this last address?

Answer. From 1649 K Street I went in 1904 to 1403 New York Avenue.

Question. About when was this?

Answer. That was in 1904.

Question. What business did you engage in there in 1904?

Answer. The same business, manufacturing and selling window shades.

Question. Was anybody else interested in your business at that time?

Answer. Nobody.

Question. What trade name, if any, did you use?

Answer. The Shade Shop.

Question. What signs, if any, did you have on your place?

Answer. I had one sign between the two windows, a sign about 3 or 4 feet wide by about 10 feet long on that line, a long, narrow sign, and between the window I had, "The Shade Shop, Window Shades."

Question. What advertising did you use at that time?

Answer. I do not remember of advertising in that place at all.

Question. How long did you stay there?

Answer. I stayed there about 15 months.

Question. Where did you go?

Answer. I went to 813 Fourteenth Street.

Question. Did you occupy that place alone?

Answer. I occupied the first floor, rear. There was a rug man at the front, but he lived upstairs, and I occupied the first floor, rear.

Question. Did you have any signs on the premises there?

Answer. I had border signs around his windows, about 18 inches. 'The Shade Shop," on the main window, and "Window Shades," on the side window. Over the door I had that same sign, the little one I told you about at 910 E Street, the little raised sign, about this big, and that wide [indicating]. I always had that over my door every place I went. Between the man's windows upstairs, where he lived, I had the board sign that I had at 1403 New York Avenue.

Question. This sign that you said just now that you had—of course, we want to get this in the record, Mr. Sammons, and I want you to tell me what the sign was that you had every place that you went—on the window. Just describe it.

Answer. Where I did not have bay windows I used this sign. Where I had a show window I used "The Shade Shop" on the main window.

Question. What coloring did you use?

102 Answer. Always green with white letters, gold binding of the letters.

Question. And the letters, "The Shade Shop" were in white on a green background?

Answer. Green background.

Question. You say you used that on all of your windows?

Answer. Every place I had glass window panes.

Question. Where did you move from this location that you have just been telling me about?

Answer. 1222 H Street.

Question. When was that?

Answer. In 1907.

Question. How long were you there at 1222 H Street?

Answer. I was there two years.

Question. Did anybody else have any interest in your business at 1222 H Street?

Answer. No, sir.

Question. Did you carry it on under the same trade name?

Answer. The Shade Shop.

Question. Tell us about your signs there.

Answer. I had a bay window there, and I had about 10 inches, 9 to 10 inches, just the main window place, I had, "The Shade Shop" in a green background with white letters. On the side I had, "Shades."

Question. Did you have any signs on the building?

Answer. No, I did not have an opportunity to put my little sign up or big sign, because I never had the front window then.

Question. What about your letterheads at 1222 H Street?

Answer. They were the same as I always carried; blue letterhead, with dark blue ink on all of my stationery since I have been in business I have carried that color in every letterhead.

Question. Some of them have been introduced here as exhibits. I will take one here. The first one that I have here is commission's Exhibit No. 14. Is that the letterhead that you have just referred to?

Answer. The same, with dark blue type.

Question. That is, as in commission's Exhibit No. 14?

Answer. Yes.

Question. What advertising did you do at 1222 H Street?

Answer. Magazines only.

Question. Did you do any newspaper advertising?

Answer. No, sir.

Question. In what magazines did you advertise?

Answer. Yes; I did advertise in newspapers. I advertised in the Evening Star for about—for a very short space of time. I do not guess, if I was there two years, I did not advertise 90 times. I advertised a couple of weeks at a time in the spring and the fall.

Question. When you did advertise what name did you use?

Answer. "The Shade Shop, Exclusive Manufacturers of Window Shades."

Question. What were the magazines that you said you advertised in?

103 Answer. Anybody that had an advertising proposition and came to me I would give them an ad., because it was only $5 or $10. It was usually the Catholic magazines.

Question. Name some of them?

Answer. And union magazines. Well, the Union Directory is one thing, because the man that ran this Union Directory, he would always come around and it seems like every year, and get the advertisements. It was only $5 a year.

Question. Where were these magazines circulated?

Answer. They were supposed to be circulated among the union people.

Question. Where?

Answer. In Washington, D. C.

Question. So the magazines referred to were local magazines?

Answer. Yes.

Question. And circulated here in Washington and not all over the country?

Answer. No, just local magazines.

Question. Did you have a bank account there at 1222 H Street?

Answer. Yes, sir.

Question. What name did you carry it under?

Answer. "The Shade Shop."

Question. At what bank?

Answer. At the District National Bank. I am positive, or it was, "W. Stokes Sammons." I can not say, but it was at the District National Bank.

Question. How did you sign your checks?

Answer. I could not say, Mr. Hawkins, whether it was, "W Stokes Sammons," or "The Shade Shop," but it was one of the two. That is the bank where I had my account at.

Question. Did you have any automobiles or trucks or delivery wagons at 1222 H Street?

Answer. No, sir.

Question. Did you have any advertising; put out any other advertising than in the newspapers and local magazines that you have described, and the signs on your first place of business; any advertising matter of any kind?

Answer. No, sir.

Question. When did you leave 1222 H Street?

Answer. I left 1222 H Street and went back to 813 Fourteenth Street in 1910 or 1909. The latter part of 1909, and I was there in 1909 and 1910.

Question. You went back to 813 Fourteenth Street, and who conducted the business?

Answer. I did.

Question. Did anybody have any interest in it?

Answer. Nobody.

Question. Under what name did you conduct it?

Answer. When I went back there I had to take the second floor because the man had moved out that occupied the second floor; he moved out and the man who had the regular business had moved out, and he let me have one big room in front and one little small
104 room in the back. I used the front room as my workroom and the small back room as my stock room.

Question. What name did you use there?

Answer. The sign I had there previously which I had taken down when I went to 1222 H Street. I used that sign; turned it upside down and used it as a table. When I went back to 813 Fourteenth Street I had the same place that I had previously, that is, between the two flat windows on the second floor of 813 Fourteenth Street. I put my little sign out, which I carry with me, the little sign about this long and that wide [indicating], "The Shade Shop," in raised letters—I put that over my door as you go in the entrance.

Question. Under what name did you conduct your business?

Answer. "The Shade Shop, W. Stokes Sammons, Manager."

Question. Where were you banking during that period?

Answer. I carried my account the same as at 1222 H Street, The First National Bank, I am positive. It was under W. Stokes Sammons, I am positive of that.

Question. What advertising did you do when you went back there to 813 Fourteenth Street?

Answer. No more than I did when I was at the other places. I always carried an ad in the Star, in the Post, and in the spring and fall, if it is only for two weeks or a month, I always advertised in the Post and Star. The Herald was not in existence then.

Question. What about your letterheads and billheads?

Answer. I carried them every place. When I moved from one place to another, I scratched the number off in ink, or got a stamp name, and put my new address underneath. I never had any reprinting done.

Question. How long did you stay at 813 Fourteenth Street?

Answer. I moved in 1910 to 724 Eleventh Street.

Question. What business were you in there?

Answer. Exclusive manufacturer of shades.

Question. How many men do you have working for you?

Answer. I always have had two men working for me.

Question. How long did Mr. Horigan work for you?

Answer. He started working for me at 1403 New York Avenue.

Question. What was the average number of men that you always had working for you?

Answer. Business did not justify but two men. I only had two men.

Question. At that time you had two?

Answer. In the fall time of the year I could always get a man. I would have four working there, they would only work in the fall. They were not regular men. I put them on and off when I had work for them to do and paid them by the day.

Question. Where did you carry your bank account when you were at 724 Eleventh Street?

Answer. I opened a bank account at the Munsey Trust Company under the name of, "The Shade Shop."

Question. Munsey Trust Company; how did you sign your checks?

Answer. "The Shade Shop, W. Stokes Sammons, Manager." Wait a minute; I want to correct that. I had a bank account
105 then—I can not say when I moved to 724 Eleventh Street right away that I had a bank account there.

Mr. Thomas H. Melton introduced me to a bank on G Street, between Fourteenth and Fifteenth Streets. Whether the bank has gone out of business now, or whether it is consolidated with some other firm, I do not know. It was the bank that was on the north side of G Street, between Fourteenth and Fifteenth.

Mr. KLESNER. The Washington Southern Bank.

The WITNESS. Where did that go; do you know?

Mr. KLESNER. I do not know.

Question (by Mr. HAWKINS). There was a bank there where you had your account?

Answer. Then I started the shade shop——

Question. How did you carry your account in the bank?

Answer. "The Shade Shop, W. Stokes Sammons, Manager."

Question. About when was that?

Answer. That was about 1910.

Question. How did you sign your checks?

Answer. " W. Stokes Sammons, Manager, The Shade Shop."

Question. When you were at 724 Eleventh Street, what signs did you have on the building there?

Answer. I had a bay window there.

Question. What did you have on it?

Answer. I had, "The Shade Shop," in a 14-inch caption on top; from the top down on the glass, 14 inches. I say "14 inches"; it may be 11 or 12, and it had, "The Shade Shop," on the main glass.

Question. Well, now, was it in white letters and green background?

Answer. White letters and green background, and on the sides, "Window Shades."

Question. Did you have any trucks or delivery wagons at that time?

Answer. No, sir.

Question. What advertising did you do during the period you were at 724 Eleventh Street?

Answer. When I first went to 724 Eleventh Street, I started an advertising campaign with the Evening Star, Mr. Archibald, an advertisement writer for the Evening Star; I made a contract with him to write my advertisements. I have never taken the add off the paper to this day. It is still in there. Mr. Archibald is authorized to advertise in every newspaper in Washington. He is my advertising manager.

Question. I understand, but under what name do you use this advertising?

Answer. "The Shade Shop."

Question. How often has it been appearing since—when was it that you started this?

Answer. I had not been in there two months——

Question. When was that?

Answer. That was in 1910.

Question. About what time of the year?

Answer. That was—I moved in there in the summer time—in the spring time.

106 Question. In the spring of 1910 you started your advertising campaign, and how often did that appear in the Star?

Answer. Every day, daily.

Question. Any other papers besides the Star?

Answer. The Post, only.

Question. The Star and the Post?

Answer. And the Post only. The Post in every day only. I only ran the Post three months in the fall and three months in the spring, six months in the year I advertised in the Post.

Question. But the Star, you advertised every day?

Answer. Every day.

Question. What name did you use in this advertising?

Answer. "The Shade Shop, 724 Eleventh Street," and after that first write-up—he was an ad-writer and every day the ad was changed.

Question. Did "W. Stokes Sammons" appear at all in this advertising?

Answer. No.

Question. Just "The Shade Shop"?

Answer. "The Shade Shop." My account was opened as "W. Stokes Sammons," with the Star, because when I went there and opened an account they says, "Well, who shall we make the bill out to?" I said, "The Shade Shop." They said they had to have

the proprietor's name, and so I said, "Make it out to the account of W. Stokes Sammons."

Question. Did you have any other advertising?

Answer. Yes, sir; I advertised very extensively.

Question. Besides newspaper advertising; describe it.

Answer. I had a telephone. That was the first time since 910. I had a telephone in 910 E Street. I had one at 1403 New York Avenue. I did not have a telephone at 1649 K Street. I did not have a telephone either the first time at 813 Fourteenth Street, but the second time, at 1222 H Street, I had a telephone. Of course my ad was in the telephone book, "The Shade Shop" only, but I advertised in the telephone directory, in the back part of the book, which has an advertising department, when I started to advertise "The Shade Shop."

Question. What other advertising did you have? You were at 724 Eleventh Street?

Answer. Only the magazines and programs. Almost everybody had a program out or magazine, and I would give an ad to anybody that would come around to see me.

Question. Did anybody have any interest in your business at all when you were at 724 Eleventh Street, besides yourself?

Answer. Do you want me to go into the Derrick affair?

Question. Did that come up at that time?

Answer. It came up shortly afterwards. It came up about a year afterwards.

Question. A year after what?

Answer. After I moved into 724 Eleventh Street.

Question. Before you moved to Fifteenth Street?

Answer. Yes.

Question. All right; tell us the story about your relations with Derrick.

107 Answer. In about April, March or April, I had a man——

Question. What year?

Answer. In 1911.

Question. That is while you were at 724 Eleventh Street?

Answer. Yes. I had a man working for me—I can get the name if I want to call up the police headquarters—detective headquarters—I sent him over to the bank. At that time I did not have a Bradstreet or Dun rating. I did not have any credit relations with anybody. Everything was sent C. O. D. or bill of lading attached. I had a bill of lading attached over to the Commercial National Bank—I think $85 or $90. I sent this man about 2 o'clock in the day to get this bill of lading out. He never came back to the shop, and I waited because I wanted to go to the depot and get the stuff, and I went over to the bank and they said that he had not come down there, and I went down to the police headquarters and I gave them his name and address, and they put a detective on his case. I waited around to hear from the detectives for three or four days.

In the meantime I found that this man had collected numerous bills of mine, accounts of $15 or $20 or $10; about six accounts altogether. That constituted my banking money. That was all I ran the business on; a very small margin. I was running the business—I would buy the material bill of lading attached, put the window shades up, and collect the money and buy other shades. I was pretty well embarrassed. I did not have any goods to run my business on, but I had plenty of work. I went to Mr. Derrick, with whom I had been doing business five or six years.

Question. How long have you known Mr. Derrick?

Answer. I had known Mr. Derrick from 1649 K Street.

Question. What was his name?

Answer. Luther L. Derrick is the way he styles his business.

Question. You say you had known him for five or six years?

Answer. I have been doing business with Luther L. Derrick since 1903.

Question. What business was he in and what business did you do with him?

Answer. He was in the wall-paper business, and I was manufacturing window shades.

Question. What were your business relations with him?

Answer. He was getting jobs—I would measure the shades and get the prices that were satisfactory to his customers, and he would tell me to go ahead with the work, and I would do the work and present the bill. I did a lot of business with Derrick for years.

Question. You presented him with the bill for your services?

Answer. For my services, and material rendered.

Question. Who paid that; did he pay you, or the customers?

Answer. Mr. Derrick, always.

Question. He paid you?

Answer. Yes.

Question. You do not know what he charged the customers?

Answer. I have nothing to do with that.

Question. Was Mr. Derrick at that time, or had he previously ever been manufacturing and making window shades?

108 Answer. He never had manufactured shades until I left 819 Fifteenth Street.

Question. That was the situation in 1912, did you say?

Answer. It was in 1911.

Question. In 1911?

Answer. March or April, 1911.

Question. 1911 you needed working capital, and what happened then?

Answer. Mr. Derrick was the only man that I wanted to go to, you understand. I did go to two or three others and they turned me down. I happened to be in Mr. Derrick's place and I had a big job to do for him. The job was out to either Mr. Woodbury Blair's house, or Mr. Blair's leased house over in Silver Springs, and I told

him I would have to have money to do the job, and he financed that job for me.

Question. You say he financed that; how did he finance it? Tell the facts.

Answer. He advanced the money to buy the material.

Question. Did you give him a promissory note for it?

Answer. No, sir, not on that one particular job.

Question. I am talking about that job.

Answer. No, sir; just gave me the money and told me to go ahead.

Question. That was just a straight loan between men?

Answer. Yes.

Question. What happened next?

Answer. Mr. Derrick knew the position I was in, because I was up there again to see him.

Question. What did you tell him that your position was?

Answer. I demanded—the man stole all the money I had, and he knew I was running on a small capital; I was running on only $150 capital, although I had my tables, my sewing machines, and all of my tools to work in.

Question. $150 is what your working capital was?

Answer. $150 was my working capital, yes.

Question. What else did you say to Mr. Derrick?

Answer. Mr. Derrick knew the situation, and I asked him if he would finance me; finance my work and that I would give him a percentage of the profits out of the business.

Question. What did Derrick say to that?

Answer. We sat down and had a talk. He says, "I will give you a drawing account. I will buy all of the material for your business, and at the end of the year we will split the profits. That was satisfactory to me. Anything was satisfactory to me because I had so much work and I had nobody to help me in my business.

Question. Was this agreement ever put in writing?

Answer. I did not need any writing with Mr. Derrick.

Question. After you had made that agreement with Derrick, what happened?

Answer. I continued at 910 E Street.

Question. I though you said you were at 724 Eleventh Street?

Answer. I mean at 724 Eleventh Street. I continued at 724 Eleventh Street until about——

109 Question. All right, now; before you get on to the next thing, you continued there. Now, then, how much did you get there under this arrangement?

Answer. Mr. Hawkins, I think I was drawing $20 a week.

Question. Who kept your books?

Answer. I did.

Question. How did you settle with him?

Answer. At 724 Eleventh Street?

Question. I am talking about 724 Eleventh Street. How did you and Mr. Derrick settle under this arrangement?

Answer. I kept all the books. When I needed any material I would tell Mr. Derrick I needed 10 yards of this or I needed 100 yards of this, or whatever it was, and of course, he had a Bradstreet and a Dun rating, and he had commercial credit, and it would come in.

Question. Who bought it; did he buy the supplies?

Answer. Why, of course, he had to buy them in his name, you understand.

Question. Did he pay cash, or did he buy on credit?

Answer. He had credit relations. He had a credit rating with every firm.

Question. And you did not?

Answer. I did not.

Question. When you wanted some supplies you told Mr. Derrick, as I understand it, and he would buy them on his credit; where would they be delivered?

Answer. 724 Eleventh Street.

Question. Who would they be billed to?

Answer. They would be billed to Luther L. Derrick.

Question. At 724 Eleventh Street?

Answer. Yes, sir; shipping instructions, "The Shade Shop."

Question. When you came to settle with Mr. Derrick, how did you settle; how often, when you were at 724 Eleventh Street?

Answer. Mr. Derrick would call for so much money from me; that the bills were due. I kept all the books; deposited all the money at 724 Eleventh Street. I would give him the money he wanted—what I means is, whenever he required that money, if I had $300, and he wanted it, I would give it to him, but if I did not have it collected, I would collect it from the accounts on the book. That was money that was for merchandise that had been purchased for my business.

Question. How did you settle on profits? I understood you to say that you agreed to split the profits; that you were to draw $20 a week, and split the profits.

Answer. That was to be the first of the year.

Question. When the first of the year came were you at 724 Eleventh Street?

Answer. Yes.

Question. How did you divide?

Answer. Mr. Hawkins, I do not know whether there was any division that year or not.

Question. That was the first of the year 1912?

110 Answer. 1912.

Question. 1912?

Answer. Yes; because it had only been a few months. We had been about 7 months in business.

Question. What books did you keep at that time, Mr. Sammons?

Answer. I had a desk that I still have, that I moved up to Fifteenth Street, and moved back to Twelfth and H, which has got a card index system, with the drawer locked, and every order that went out of the place, whether I made it, or Mr. Horigan made it, anybody working for me put it on the book. Once a week, which was Saturday, I would take that book and write on the top of the card the job number on the book, over here. The date when the job was done, because every job was dated the day it was done. Now the man's name went there, and the amount of the job. I would put that in the front part of the files. That was the unpaid bills. When they were paid, I would take them out of here and put them in the paid bills. Now, every Saturday I made Mr. Derrick a report of the actual expenses of the business, the net cost of every job, the salary, the advertising, the electric light, the telephone; what it cost, and rendered him a statement, also the amount and character of the work that was done. I would show what was made that week.

Question. With whom did you settle on the profits?

Answer. At the end of the year—I can not say in dollars and cents, but at the end of the year, of that year, which was only 7 months in business, because I was there from May 1, I went with Mr. Derrick, and the stuff did not come in—business was kind of slow in the summer time. He would only stock me up with cut shades to this extent, if I wanted—he never stocked me up with cut shades. If I wanted 10 yards of material he would buy me 10 yards. That is cut prices. You do not understand the window shade business. If you buy one whole piece you get a piece price, that is about 20 per cent cheaper than cut prices. The jobbers make that profit in selling the cut pieces. He would not stock me completely at 724 Eleventh Street.

Question. At the first of the year of 1912, what is your recollection as to whether Mr. Derrick split any profits with you?

Answer. He might have possibly given me some money. I do not know what is was.

Question. You described the filing system you had. Did you keep any other books?

Answer. I kept all the books.

Question. Tell us what the books were.

Answer. I had a book——

Question. Did you post that into a ledger?

Answer. No; I had no ledger system. This filing system was my book.

Question. Did you keep a cash book, too?

Answer. Yes; I had a cash book, cash paid out and received.

Question. Then you posted from your book into your filing system which was in lieu of a ledger?

Answer. That was all business done.

Question. Where are those books and that filing system?

Answer. They are all destroyed.

111 Question. You have not any of them?

Answer. No; I have not any at all. I carried them when I left Fifteenth Street.

Question. Now, under this arrangement with Derrick, who banked the money that came in?

Answer. At 724 Eleventh Street I banked the money.

Question. Was it banked under the name of "The Shade Shop?"

Answer. That is when I went up to the Munsey Trust Co. and opened an account as, "The Shade Shop," in the Munsey Trust Co. I did that because there was at Fifteenth and H Streets me and Mr. Derrick's place of business. My account with the Munsey Trust Co. was, "The Shade Shop, W. Stokes Sammons, Manager."

Question. Some time after the first of the year of 1912, you moved to 819 Fifteenth Street?

Answer. No, I did not move to 819. I tell you how that came about. Mr. Derrick was then located at 809 Vermont Avenue.

Question. In 1912?

Answer. In 1912, and previous to that, for about 10 years. Now, Mr. Derrick had occasion to get a building at 819 Fifteenth Street, and we talked it over, and he says, "Sammons, you can save the rent." Where I was at I was paying about $45 a month, and the electric light bill and the telephone and all like that. He says, "If you bring your business up to my building it will cut my expenses, and then we will be in this new building, and then we will all be under one roof." Now, I was perfectly satisfied with that, because Mr. Derrick said that he would take Mrs. Scott, who is his bookkeeper, and only charge a nominal fee of, I think, $10 a week, and she would do all of my typewriting and look after all of my books and do all of the work and only charge The Shade Shop a salary of $10 a week. Now, I thought that was very agreeable. He was to furnish the electric light at a cost of 25 per cent of his total bill. It might be 35 per cent, but it was 25 or 35 per cent of his total bill he would charge to The Shade Shop for electricity used. For rent I was to pay the very nominal sum down of $30, I think. He was very anxious to get that second floor rented. In fact, he had signs on the building, but he was never able to rent it.

Question. Did he move to 819 Fifteenth Street?

Answer. We both moved.

Question. When was that?

Answer. Around November or December.

Question. 1912?

Answer. 1912.

Question. What part of the building at 819 Fifteenth Street did you occupy with your business?

Answer. Mr. Derrick occupied the first floor front as a salesroom; the first floor rear as the trimming tables for his wall papers. I occupied the second floor front in the room adjoining the second floor

front for The Shade Shop, and he occupied the two rooms in the rear for his stock of wall paper.

Question. Did you occupy any part of the first floor?

Answer. Mr. Derrick had a desk on the first floor. Mrs. Scott used one end of the desk, and one end was assigned to me. All bills and all books and all correspondence that went out, and every-
112 thing, was put on that one side of the desk that was assigned to The Shade Shop, and I would ask her to write an estimate, and she would put the copies on, and when I wanted her to refer to it I would get it right there; all the books pertaining to The Shade Shop were also in that desk, and that was supposed to be my office on the first floor. In fact, I would meet the majority of my big customers on the first floor. We had a telephone arrangement, a switchboard, and if anybody would come in and ask for The Shade Shop, or "Sammons," Mrs. Scott would give me a ring upstairs and I would come down. It was only the intimate customers that got accustomed to coming upstairs—that would take the liberty of walking upstairs.

Question. Did you show any of your shades on the first floor?

Answer. Yes, I had sample books; a complete line of sample books.

Question. Where did you manufacture them; what part of the building did you use for manufacturing your shades?

Answer. The second floor, front.

Question. What signs, if any, did you have on the building?

Answer. We had a space on the window up there.

Question. On the second floor?

Answer. Yes. Mr. Hawkins, there was only one sign on the second floor, front. Wait, now; we had two signs. I had three windows.

Question. What signs did you have?

Answer. Between the three windows; the center window and the north window, I had a sign, "The Shade Shop," and on the center window, between the center window and the south window I had another sign, "The Shade Shop."

Question. Did you have any other signs on the building, at all?

Answer. No place.

Question. Did you have anything on the first floor?

Answer. Nothing at all.

Question. Now, where did you carry your account during the time you were at 819 Fifteenth Street; your bank account?

Answer. It was understood by Mrs. Scott that she was to take charge of all the books; that she was to take charge of The Shade Shop's account, because when we went there in December, as I told you——

Question. December of 1914?

Answer. 1912–14; Mr. Derrick decided to put in a stock of window shades.

Question. Wait a minute. I think it was December, 1912, that you went to 819 Fifteenth Street.

Answer. No, sir; it was December, 1914.

Question. Where were you when——

Answer. No; 1912. What am I talking about? Sure, it was 1912; pardon me. I was thinking about when I left Twelfth Street in 1914. It was in 1912.

Question. It was not in December, was it?

Answer. Yes, sir. The day after Christmas. Mr. Derrick and I went to New York the 27th of December. It was the day following the day after Christmas—we went to New York and purchased a stock of window shades.

Question. How were they purchased?

113 Answer. They were purchased under Luther L. Derrick. He had credit arrangements.

Question. Did he pay cash for them or did he buy them on credit?

Answer. Credit.

Question. All right; then what?

Answer. That is when he decided to put in a stock of window shades. He purchased, I guess, about $2,000 worth of shade cloths, rollers, and accessories.

Question. You came back from New York, and how did you operate there at 819 Fifteenth Street; who kept the books; under this arrangement with Derrick, who collected the money?

Answer. Mrs. Scott kept the books and Derrick collected the money.

Question. When you filled an order for shades who billed them?

Answer. Mrs. Scott billed them.

Question. To you or Mr. Derrick?

Answer. I take it for granted it would be sent to me. When I get an order for shades, if I get an order for John Smith, Smith would get the bill.

Question. Did the bill show that Smith owed Luther Derrick or The Shade Shop?

Answer. The Shade Shop; the same as I always carried it. The same color, the same type, the same name, and everything.

Question. But Mrs. Scott kept the books?

Answer. Mrs. Scott kept the books.

Question. She sent out the bills?

Answer. She sent out the bills.

Question. Now when it came around to making your pay roll, how was that done?

Answer. I got the pay roll.

Question. From whom?

Answer. Mrs. Scott.

Question. Mrs. Scott gave you the pay roll, and you paid the men?

Answer. Yes.

Question. How much did you draw every week?

Answer. $25.00, then.

Question. Did you ever split profits with Mr. Derrick?

Answer. Yes, sir.

Question. Under this agreement?

Answer. Yes.

Question. When?

Answer. Around about two days after the first of the year.

Question. Of what year?

Answer. For 1912 business it would be around January, 1913.

Question. What happened on the first of 1913 when you and Mr. Derrick split your profits under this arrangement?

Answer. We figured up the total.

Question. How did you do it?

Answer. We figured the total purchases of the year up. We took an inventory of the stock and deducted the—we took the entire purchases.

Question. That is, the amount of sales?

114 No, the entire purchases of the material.

Question. What Mr. Derrick had bought?

Answer. Yes.

Question. And then what did you do?

Answer. We took an inventory of stock. Now, we took the expense of running the business and charged to The Shade Shop all gasoline—he had a gasoline station in the rear; he had a tank put in there, because he had a couple of trucks. He had his own machine. I had my own automobile, there, say I got 5 gallons of gas for my car—it was a register, you understand, to do the measuring—he would charge me—in fact, I would just say, "Mrs. Scott, I want 5 gallons of gas for my car," and he charged all the advertising; he charged one-half of the telephone bill; he charged rent, he charged stationery, he charged Mrs. Scott's salary of $10 a week.

Question. What about the rent?

Answer. The rent was $35 a month.

Question. Was that charged?

Answer. That was charged to The Shade Shop.

Question. What about the pay roll?

Answer. That was also charged.

Question. All those things that he charged had been paid by him?

Answer. By him; yes, sir.

Question. And then I assume that you charged your $25 a week, your drawing account?

Answer. Yes, sir.

Question. What did you do with all of those charges in this settlement?

Answer. That was deducted; that was totaled up and deducted as expenditure against the total amount of business done. Now, if we did $15,000 worth of business——

Question. Just a minute. Can you remember what it amounted to for a year?

Answer. Yes, sir.

Question. Give us the figures.

Answer. About $12,000 worth of business a year.

Question. Now, when you came to figure this out the first part of 1913, the business done during the year 1912, you found you had done a gross of about $12,000 a year?

Answer. $12,000 a year. Now, I say $12,000. It may have been $12,500, or $12,300. It was around $12,000. It was not much more than $12,000.

Question. Then, what deductions did you make from the $12,000?

Answer. We found the net profit, and Mr. Derrick gave me my share of that profit.

Question. About how much was that net profit?

Answer. That net profit, I could not say. I think it ran around $2,000. It might have run around $1,500. It was around between $1,500 and $2,000, net profit.

Question. Was that your share or yours and Mr. Derrick's?

Answer. The net; that was everything.

Question. Everything?

Answer. Yes.

115 Question. After you made all the deductions that you have described, your figures showed that you had something between $1,500 and $2,000?

Answer. Yes; between $1,500 and $2,000. If it was $2,000 and I got 10 per cent of it—it never was over $240. He gave me possibly $210. It was around $200 that he gave me.

Question. I thought you said you were going to split half on it.

Answer. No, sir. My drawing account figured up there, you understand. You take $25 times 52.

Question. That is what I was getting at.

Answer. How much is $25 times 52?

Mr. AHALT. $1,300.

Question (by Mr. HAWKINS). He charged your drawing account against your profits?

Answer. Yes.

Question. Did he have a drawing account?

Answer. No.

Question. You figured you had about $2,000 profit?

Answer. We figured we had about $2,000 profit. It might have been $2,400, or it may only be $1,800.

Question. Suppose it was $2,400?

Answer. I would get $240.

Question. $2,400; then, under your arrangements, you were entitled to half of it, were you not?

Answer. No, sir.

Question. How much?

Answer. I was entitled to 10 per cent of it.

Question. Ten per cent of the profit?

Answer. Ten per cent of the profit.

Question. Ten per cent of the profit?

Answer. Yes.

Question. Well, after you had taken——

Answer. Out my salary; my salary was supposed to figure up around—Mr. Ahalt said about $1,900——

Mr. AHALT. $1,300.

The WITNESS. $1,300.

Examiner DUNHAM. Mr. Hawkins, I understand the witness to mean this: That they deducted everything, every item of expense from the gross business done for that year, and it amounted to around $2,000 net, and of that $2,000 net he got a weekly payment of $25 in the way of a salary; that, estimated, according to my understanding of the witness's testimony, during the year, 25 times 52 weeks, would be $1,300. Then, I understood you to say, Mr. Sammons, when you were all balanced up you got something like $240?

The WITNESS. Yes.

Examiner DUNHAM. That made $1,540 that you got out of a profit of around $2,000?

The WITNESS. No.

Examiner DUNHAM. That is what I understood. I have gotten lost in the shuffle.

Question (by Mr. HAWKINS). I am going to try to get that straightened out. When you made all the deductions you had, say, $2,400 left?

116 Answer. Yes.

Question. You figured that is what you had made under this arrangement?

Answer. Yes.

Question. During the year?

Answer. Yes.

Question. Had your $25 a week been taken out, then?

Answer. Yes, sir.

Question. After you had received $25 a week and that had been deducted, there was still $2,400 in the pot?

Answer. Yes.

Question. So that the $2,500 was the net profits, charging out everything, all overhead, and all expenses, including your drawing account?

Answer. Yes, sir.

Question. And that was to be split between you and Mr. Derrick?

Answer. Yes, sir.

Question. Now, what percentage of that net profit did you receive?

Answer. I received 10 per cent. The reason why was when I made a contract with him I was satisfied to do anything to get in with him.

Question. What was your contract?

Answer. Ten per cent.

Question. You were to get 10 per cent of the net profits?
Answer. Yes, sir.
Question. And Mr. Derrick's bookkeepers kept the books?
Answer. Yes, sir.
Question. And paid all the bills?
Answer. Yes.
Question. And collected the bills?
Answer. Yes.
Question. After you drew $25 a week, then, at the end of the year you squared up, and you had 10 per cent of the profit and he had 90 per cent?
Answer. Yes, sir.
Question. Of the total?
Answer. Yes, sir.
Question. Now, you say you had an automobile there; did you have any signs or advertising matter on the automobile?
Answer. No.
Question. Was Mr. Horigan working for you then?
Answer. Yes, sir.
Question. Now, how long did you stay there at 819 Fifteenth Street?
Answer. I stayed there until April in 1914.
Question. During that time what advertising were you doing?
Answer. We advertised in the Star a great deal. We advertised—I mean I advertised in the Star, possibly six months in the year.
Question. Did Mr. Derrick's name at any time figure in any of the advertising?
Answer. Never.
Question. How was the advertising carried?
Answer. "The Shade Shop."
Question. What about the letterheads and billheads?
117 Answer. "The Shade Shop."
Question. Did Mr. Derrick ever claim to have any other interest in your business other than you have detailed here?
Answer. Never; just financing me in the business, that is all.
Question. Just the way you have told it here?
Answer. Yes, sir. He never purchased anything from me.
Question. It never was in writing?
Answer. He never purchased the good will of the business; never purchased the sewing machines or anything. It was my own business, you understand, and he financed it.
Question. Those books that were kept by this Mrs. Scott, where are they?
Answer. I beg your pardon?
Question. Where are the books that were kept by Mrs. Scott?
Answer. She has them. The only books that I have got are some day books that I had. I kept, of course, an impression of all orders in my filing system, you know. I would make out my book just the

same as if the business was mine. My men worked for me; I employed them and I fired them. My customers never knew, nobody ever knew Luther L. Derrick as being in the shade business at all. I solicited and did business with my customers under my own name, "The Shade Shop."

Question. What arrangements, if any, did you have with Mr. Derrick as to any disposition of the name, "The Shade Shop," that you had been advertising all of these years?

Mr. AHALT. What was that question?

Mr. HAWKINS. Read the question.

(Thereupon, the reporter read the above question.)

The WITNESS. You mean when I left, Mr. Hawkins?

Question (by Mr. HAWKINS). When you went there you made this arrangement with Derrick. Was anything said about that?

Answer. No, indeed. He knew that was my business. He knew that he was just financing it to make a profit out of it. He asked me two or three times. He said he was perfectly willing to help me. He was in anything to make a profit out of it. Mr. Derrick has been in several ventures like that, in the ice business, and different things.

Question. Was there anything said in this agreement, or anything done by which Mr. Derrick acquired any right or title or interest in or to that name, "The Shade Shop"?

Answer. I never gave him any rights.

Mr. AHALT. I object to that question on the ground that it calls for a conclusion of the law as to whether or not Mr. Derrick acquired any interest in the business by reason of the facts that the witness has already testified to.

Examiner DUNHAM. Now, the objection is in, Mr. Witness, and you can answer.

Mr. HAWKINS. Read the question to him. I want to be sure that it is right.

(Thereupon, the reporter read the pending question.)

The WITNESS. No.

Question (by Mr. HAWKINS). How long did you stay there with Mr. Derrick under this arrangement at 819 Fifteenth Street.

Answer. To April, in 1914.

118 Question. Now, when you left, what happened and what arrangements did you make; what did he do?

Answer. I notified him when we split the profits for the year 1913; I notified him that I was going back in the shade business at another place.

Question. Did you split the profits for 1913 along about the first of the year, 1914?

Answer. Yes, sir.

Question. Do you remember what that split was?

Answer. Same amount; about the same amount; about the same amount both years. Around $2,000, $1,880, $2,400, or something like that.

Question. You got 10 per cent?
Answer. I got 10 per cent.
Question. And he got 90 per cent?
Answer. Yes.
Question. When did you tell him you were going?
Answer. Right after that——
Question. When did you tell him you were going to move?
Answer. About—I gave him a couple of months' notice; about the 10th or 12th or 15th of February I told him I would give him plenty of time to get somebody up there to work in the shade place, and I would help his nephew and teach him until he could establish the business.
Question. Who was his nephew; what was his name?
Answer. He name was Milton Derrick.
Question. Where did he come in on it?
Answer. He just started in on it. Derrick had to have somebody there. He knew all of my workmen were going with me. I had three or four workmen with me.
Question. What else was said by you or Derrick in regard to closing this arrangement; closing out your arrangements with one another?
Answer. Nothing was ever said until I moved my desk; my old sewing machine, and table I had carried there. It was not a very good table and Mr. Derrick built a new table, but I gave him my old tables, you understand, in the rear. I carried that and took my tools and straightedges and saws, and everything that I carried there, and I told him in regard to his name outside, I said, "Mr. Derrick, you know that I want you to take that sign off the building."
Question. What did he say to that?
Answer. He said he did not intend to take the sign off the building but he did intend to take off "The," and put "Derrick" up there, and I says, "You know 'The Shade Shop' name has always been my trade name. That is my bread and butter."
Question. What did he say to that?
Answer. He agreed with me and said it was perfectly satisfactory. He said, "It belongs to you; you take it."
Question. Did he put up the sign, "Shade Shop"?
Answer. The sign was already up. He just repainted over the "The," and put "Derrick" up there.
Question. Then you moved down to the corner of Twelfth and H?
Answer. Yes.
Question. What did you do when you went away from there?
119 Answer. I took my sewing machine, table, saws, straightedges, knives, desk——
Question. Did you have any stock on hand?
Answer. I never had anything when he went with me. I never had any stock when we went together.
Question. I mean when you came to quit, was there any stock there at 819?

Answer. No; the stock was his.

Question. Was there any there?

Answer. Oh, yes; yes, sir.

Question. You did not take that?

Answer. No, sir.

Question. Because that belonged to him under this arrangement?

Answer. Yes, sir.

Question. Just what did he do after that; start making window shades and selling them.

Answer. What did he do?

Question. Yes.

Answer. He never did anything.

Question. I though you said he put his nephew in there.

Answer. Yes, I did. He put his nephew there and continued manufacturing window shades.

Question. Did you assist in any way in showing his nephew how to conduct the business?

Answer. Yes; I taught him the business.

Question. How did you and Mr. Derrick finally settle, make final settlement of your affairs when you left?

Answer. Well, there was no profit at all, Mr. Hawkins, during the months of January, February, and March. That is a very dull season, and there were no profits at all. We agreed that there was nothing coming to me.

Question. Did you have anything in writing?

Answer. There never was anything in writing.

Question. Did you assign any of the accounts to him?

Answer. I did not. The only time I assigned an account was on the Henderson affair.

Question. Mr. Henderson testified, brought in an exhibit here, respondent's Exhibit No. 5, which has in the left-hand corner a pencil notation, "O. K., The Shade Shop, per W. Stokes Sammons." The billhead is: "Luther L. Derrick Company." Will you tell us how that came about? How did you come to O. K. that?

Answer. Mr. Henderson, the same as all of my other customers, never knew anybody connected with The Shade Shop but W. Stokes Sammons. Mr. Henderson has testified yesterday that he absolutely refused to pay the bill because he did not owe Luther L. Derrick any money. This account had been owing a long time after May, 1912. The bill was sent a couple of times. It was on August 26th that Mr. Derrick finally came to me and asked me to make an O. K. so he would get his money. That was the first time Mr. Derrick did it. It belonged to Mr. Derrick, and I O. K'd it.

Question. It belonged to Mr. Derrick?

Answer. Mr. Henderson did not know Mr. Derrick in the matter at all.

120 Question. That was after you went down to 1222 H Street when you O. K.'d it?

Answer. I was in business at Twelfth and K. Street.

Question. Twelfth and H?

Answer. Twelfth and H. We opened up there. This bill was mailed from Twelfth and H after I had been in the business at Twelfth and H.

Question. That leads up to your final arrangements and settlements with Derrick when you left. I assume from what you have said with reference to this account that all the accounts that had been due there at The Shade Shop, that the money was to go to Derrick?

Answer. Yes.

Question. Under this arrangement?

Answer. Yes.

Question. That is the way you settled?

Answer. That is the arrangement we made, to have one bookkeeper. You see, by having one bookkeeper, she took charge of everything and that relieved me. I readily volunteered that she take the money, draw the checks, pay the bills, and such as that.

Question. How long have you known the firm of Hooper & Klesner?

Answer. 1910.

Question. Who were the members of that firm?

Answer. Mr. Klesner and Mr. Hooper.

Question. What is Klesner's first name?

Answer. Albert.

Question. And what is Mr. Hooper's first name?

Answer. Harry.

Question. When you first knew them in the year 1910, where were they located?

Answer. That I could not say. It was right across the street from me, 715, 717, or 719—721 Eleventh Street.

Question. What business were they engaged in there?

Answer. Wall papers and painters.

Question. In the next four years, how well did you know them? Did you have any business relations with them?

Answer. Yes, sir; considerable.

Question. What were your business relations?

Answer. Manufacturing shades for them.

Question. I want you to tell me about that.

Answer. They had some customers and my experience has been with painters that they will take a contract to paint and paper and put in window shades, and then frequently they will sublet the contract to us, and we would do all the work and furnish the stuff and render them a bill; that is, render Hooper & Klesner the bill.

Question. Did you do that for Hooper & Klesner?

Answer. Yes.

Question. Is that the same way that you did with Derrick?

Answer. We did that with about 25 paper hangers in Washington.

Question. Were Hooper & Klesner in 1910 or four years afterwards manufacturing shades themselves?

121 Answer. No, they were not window-shade manufacturers. To manufacture window shades you have to have tables and sewing machines, and straightedges, and knives, and such as that.

Question. Did they have any equipment of that kind?

Answer. Not that I know of; no.

Question. Do they carry a stock of window shades or sell them?

Answer. I could not state that, I never seen them in the place.

Question. Explain a little more fully the business that you did with them; amplify it. You say they sublet a contract to you. Tell us about that.

Answer. They would sometimes send us to an address to measure the shades and submit samples and give them a price. We would do that, and they, in turn, would submit that price, not the price we submitted, but after they had put their profit on, to their customer. After that, if that customer would accept their estimate, they would tell us to go ahead with the job, and we would do all the work and submit Hooper & Klesner a bill as per our estimate, and then if they had their own apartment-house work, they would tell us to go to whatever building it was, and we would go up and just install the shades.

Question. After you installed the shades, did you collect from the customer?

Answer. No, sir.

Question. Who did you collect from?

Answer. Hooper & Klesner.

Question. You never knew a customer in the transaction, at all?

Answer. No.

Question. You never knew what Hooper & Klesner charged the customer?

Answer. Never.

Question. That was an agreement, a contract between you and Hooper & Klesner?

Answer. Yes, sir; an agreement between Hooper & Klesner with me.

Question. That had been your relations with Derrick, too?

Answer. The same relations, 80 per cent of the wall-paper men in Washington do business that way.

Question. You do that with other firms, do you?

Answer. Yes.

Question. Now, tell us how you happened to go to the corner of Twelfth and H Street.

Answer. I notified Mr. Derrick in January that I intended to go in business for myself on my own hook. Of course, I wanted to give him two or three months' notice. I seen this building for rent at Twelfth and H Street. Beings that I did not have any credit

with the merchants in Washington I could not give Mr. Waggenhoust——

Question. Who was Mr. Waggenhoust?

Answer. Mr. Waggenhoust was the agent of the Twelfth and H Street property. I went to see Mr. Waggenhoust personally myself in regard to the place. I think Mr. Waggenhoust declined to let me have it, for reasons I do not know. But I knew it was a good stand and I wanted to interest Hooper & Klesner.

Question. Who did you talk to?

122 Answer. I talked to both of them. I told them the opportunity it would give us if we both went in and split the rent up; that it would make it very reasonable, and that I was perfectly willing to pay one-half of the rent of the building, of the store, at Twelfth and H Street.

Question. Tell us what arrangements you finally made with Hooper & Klesner?

Answer. After they had found out the proposition was satisfactory they went and rented the corner and took a lease on it and then we come to agreements that I was to pay for one-half of the window cleaning and the towel service and the telephone and the rent and pay Mrs. Williamson.

Question. Who was Mrs. Williamson?

Answer. That is the stenographer. I would get that stenographer service, you understand, my portion. We were each to have one-half. That was in the contract.

Question. As I understand it, the agreement was that you were to have one-half and they were to have one-half of the store for their business, and you were each to pay half of the overhead expenses?

Answer. Yes; that continued——

Question. That is the agreement you had when you went in there?

Answer. Yes.

Question. When you went there what did you do about the signs?

Answer. Of course, we come to an agreement in regard to the signs.

Question. What was that?

Answer. It was that I was to have the window signs, because I explained to them that I always had that. I had my sign, "The Shade Shop," in the windows with a green background and white letters. They were perfectly satisfactory, because they took the top sign all the way around the building above mine. Over the roof they had a sign. They came to a satisfactory agreement in regard to the signs.

Question. What portion of the store there at the southeast corner of Twelfth and H did you occupy, and what portion did they occupy?

Answer. We had an entrance, No. 741, that I used as a tradesmen's entrance for all my stock and workmen. My customers were supposed to come in the front entrance of the store at the corner of Twelfth and H.

Question. You say they were supposed to. Tell us what they did do.

Answer. They did—you understand all of my customers, except the most intimate customers, they would come in—they would get accustomed to coming in the side door.

Question. Was that the arrangement with Hooper & Klesner that you were to have that portion of the store?

Answer. Yes.

Question. Did you have shades on exhibition there for the purpose of showing—in that portion of the store?

Answer. I had sample shades in the windows.

Question. Where?

Answer. Two on H Street and two on Twelfth Street.

Question. Where did you meet your customers?

123 Answer. I met my customers—they would call me there. Mrs. Williamson, or Mr. Hooper, or Mr. Klesner, if anybody come in for window shades, I would walk up behind the screen; I would walk up and interview them.

Question. What advertising did you do when you were there with Hooper & Klesner under this arrangement?

Answer. When I went with Mr. Derrick on Fifteenth Street Mr. Derrick, to cut down overhead expenses, cut the advertising out in the summer time and in the wintertime in January and February and March, the dull times of the year. When I went back to Twelfth and H Street I immediately started my advertising campaign as at Eleventh Street, the way I had in the Star.

Question. What was it?

Answer. Mr. Archibald wrote my advertisements and took the contract.

Question. How did you advertise yourself?

Answer. "The Shade Shop."

Question. Where did you say The Shade Shop was?

Answer. "The Shade Shop, Twelfth and H Street, Northwest." That was the way I put it in underneath. He wrote that advertisement. That always carried up in front "The Shade Shop, 12th and H."

Question. What papers did that appear in?

Answer. In the Star every day.

Question. For how long?

Answer. For the entire period.

Question. How long were you there at that corner?

Answer. I was there for about two years.

Question. During those two years what other papers, if any, besides the Star did that sort of advertising appear in?

Answer. The Post, the Times, and the Herald, every opportunity I had.

Question. What other advertising besides in the papers?

Answer. In the telephone directory. I was advertising in the telephone directory, in the advertising department.

Question. Where else?

Answer. And the labor papers. I always advertised in the K. C. S.

Question. What is that?

Answer. I mean the Catholic paper, you understand. I advertise in these Catholic papers.

Question. Is that K. C. S. paper the Knight of Columbus paper?

Answer. Yes.

Question. Do you always advertise in that?

Answer. Yes.

Question. What other papers do you advertise in?

Answer. You see, these Catholic churches, they get up a book every year and I always give them a page of advertising, or a half page of advertising every year.

Question. Did your name, "Sammons," appear in these advertisements, or is it, "The Shade Shop?"

Answer. Never; "The Shade Shop."

Question. Did you have any trucks or automobiles for delivery?

Answer. Yes; when I was at Twelfth and H, I bought a truck.

Question. Did you have any sign on that?

124 Answer. Wait a minute; yes, I bought a truck at Twelfth and H Street in the last three months I was there. I bought a truck but I never had any sign at Twelfth and H Street on the truck.

Question. During the two years that you were with Hooper & Klesner in those premises at the southeast corner of Twelfth and H did you have any sign on the delivery truck of any kind?

Answer. No; I purchased my truck——

Question. How was your telephone during that two years there?

Answer. The first year, possibly nine months of the year, there was a lot of confusion in the telephone. I would want to use it or Mr. Klesner would want to use it—then the bills came in and there were so many calls, extra calls; and there was always an argument as to who was making the most calls during the month, so it was decided; we both agreed that it would be better for me to get a telephone of my own.

Question. When you were using the same phone?

Answer. I had an extra listing in the book, "The Shade Shop."

Question. Was it under "Hooper & Klesner"?

Answer. The number, yes; but the extra listing I paid for. They charged me for that.

Question. You took out the phone?

Answer. Yes; Main 4874.

Question. Mr. Hunt testified that it was about May, I think, of 1915; he testified yesterday.

Answer. Yes, sir.

Question. Where were you banking during those two years?

Answer. Munsey Trust Co.

Question. How did you carry your bank account?

Answer. The same as I carried it at 724 Eleventh Street, and 819 Fifteenth Street.

Question. How was that?

Answer. I beg your pardon?

Question. How was that?

Answer. "The Shade Shop."

Question. How did you sign your checks?

Answer. "The Shade Shop, W. Stokes Sammons, Manager." During the period I was at 819 Fifteenth Street I had no occasion to bank for The Shade Shop, because it was our agreement that Mr. Derrick would do the banking.

Question. During the two years that you were operating there at the corner of Twelfth and H Streets, did anybody have any interest in your business, at all?

Answer. No, sir.

Question. Did Mr. Derrick make any objections to you, at all, using the name, "The Shade Shop"?

Answer. No, sir.

Question. What was the business of Hooper & Klesner during the time that you were at Twelfth and H Streets?

Answer. Wall papers and painters.

Question. Did they manufacture shades at all?

Answer. No; not when I was there.

Question. That is what I mean, while you were there?

Answer. Not while I was there.

Question. When did you leave that corner?

125 Answer. I left that corner—my lease started November 1 with Stone & Fairfax, at 738 Twelfth Street. Now, two days before the first of the month—the first of the month fell on Tuesday, Sunday, I knew I could not move on Monday because that is the busiest time of the year, the fall time of the year. Sunday I asked my men would they all come up and help me move on Sunday and take down the table——

Question. That was in November, you say?

Answer. That was in October, October 28—29th of October. My month was not up with Hooper & Klesner until Monday night. The first day of the year was on——

Question. The first day of the month?

Answer. The first day of the month was on Tuesday, November 1. I had four men working for me and we came down on Sunday——

Question. Before you get to that, when did you tell Hooper & Klesner you were going to move?

Answer. About three months previous. They knew, because the building was going up and I made arrangements——

Question. You say the building was going up?

Answer. The new building was going up and I told them about two months previous that I intended to occupy that building.

Question. Did they make objections to that?

Answer. They made objections in regard to breaking the contract. I think they were satisfied though that I got out.

Question. It was not satisfactory to them?

Answer. They appeared to be dissatisfied because I was breaking my lease with them. I had a lease——

Question. Wait a minute——

Mr. AHALT. Let the witness answer.

Mr. HAWKINS. I was trying to get it right.

Question (by Mr. HAWKINS). When you went there you did not have any credit, as I understand it, but Hooper & Klesner did, and took the lease on that property. Did you make a lease with them?

Answer. I subleased, but with Hooper & Klesner.

Question. And you broke your lease?

Answer. Yes.

Question. And that is what they objected to?

Answer. Yes.

Question. Your sublease with Hooper & Klesner was not up; had not expired?

Answer. It had not expired.

Question. How much longer did it have to run?

Answer. I could not say.

Question. About how long?

Answer. I think about a couple of years to run.

Question. So you breached your lease?

Answer. Yes.

Question. And that is what they objected to?

Answer. Yes.

Question. In the meantime you had made arrangements to lease the new premises?

Answer. Yes.

126 Question. Where were they located?

Answer. 733 Twelfth Street.

Question. How many doors south of Hooper & Klesner's corner was that?

Answer. 35, 37—there were two doors between us.

Question. So that would make it the third door south?

Answer. The third door south.

Question. Did you go down the last Sunday morning in October to move?

Answer. Yes, sir.

Question. Who was there?

Answer. At 741; the entrance at 741, which you remember I testified is the extra entrance around the corner of the store at Twelfth and H—I only had the key for the 741 entrance, see—understand, Mr. Horigan had the key for 741. I think Mr. Horigan got there first. He used to come down in the morning early, so I went in there.

It was about 20 minutes later that the two other men and Mr. Horigan and myself——

Question. You went in at the 741 street entrance?

Answer. Yes, sir.

Question. Mr. Horigan, in his testimony, mentioned that as being the workshop.

Answer. Yes.

Question. Was that where you did your manufacturing?

Answer. Yes.

Question. How was that connected with the rest of the building; with the rest of the storeroom?

Answer. Just a panel partition about 8 feet high.

Question. Was there a door between?

Answer. No; just an entrance about that far [indicating].

Question. When you went to get into the workshop from the storeroom——

Answer. Just walked around the partition, like that [indicating].

Question. You went in there that Sunday morning for the purpose of moving?

Answer. For the purpose of moving; yes.

Question. Did you move?

Answer. Moved everything.

Question. What was everything? Tell us what you moved.

Answer. I moved my tables first. My sewing machine; my tacking-room table. I moved my stock.

Question. Where did you take it?

Answer. To 733 Twelfth Street, and then I moved the desk.

Question. And then what happened?

Answer. Then I decided to take—I intended to take my signs off the window. I paid for them. I had them painted on. They were my signs and I decided to take them down. Mr. Klesner had come down in the meantime, as they generally come down; he and his partner would come down on Sundays and would go over the business. Mr. Klesner came down that morning——

Question. Was Mr. Hopper there?

127 Answer. No; Mr. Klesner was there.

Question. Did he make any objection to your moving out your stock?

Answer. He just sat on the other side of the desk and was tending to his business.

Question. Then what happened?

Answer. There was a ladder there at the window. We carried the ladder and put it up to the window and Mr. Horigan—I had a box and Mr. Horigan got on the ladder, and I got on the box, and Mr. Horigan was taking these sample shades that hung down over two screws. I had already started to erase a part of the window myself, and I had an old shade knife in my hand.

Question. Erase part of the window. What part was it that you erased?

Answer. My signs that I put out, "The Shade Shop."
Question. What was Horigan doing?
Answer. He was on the ladder and I was on the box.
Question. Then what happened?
Answer. Then Klesner ran out front very excited and ordered us out of the place.
Question. What did he say?
Answer. Just said to get out, and pulled a gun and says, "Get out." Kept on saying, "Get out."
Question. What did you do?
Answer. I went out.
Question. Then what did you do?
Answer. I went out and went across the street and called the police.
Question. Did a policeman come?
Answer. He came up about three minutes after.
Question. What happened?
Answer. I told him a man had threatened us with a gun.
Question. What did the policeman do?
Answer. Klesner had locked the door. The door was locked and he opened the door for the policeman. The policeman asked him to open the door, and he opened the door and he asked what was the trouble, and he said he did not know there was any trouble, and then we were right in back of the policeman, of course, and he said, "These men claim you drew a gun on them," and he says, "I did." He says, "Let me see the gun," and he showed him the gun.
Question. What did the policeman do?
Answer. The policeman told him he would have to go down to the station house.
Question. Did they go to the station house?
Answer. Yes, sir.
Question. What did you and Horigan do?
Answer. Lodged a complaint against him.
Question. Did you go to the station house?
Answer. Yes, sir.
Question. How long did you stay there?
Answer. Fifteen minutes.
Question. Then what did you do?
Answer. Came back.
Question. When you got back what did you do?
128 Answer. The doors were locked. I had a key and I opened the door.
Question. As you go into the corner entrance or——
Answer. My own entrance.
Question. To your workshop?
Answer. Yes.
Question. Was it barricaded in any way?

Answer. It was. I was the first one, and Horigan was about 3 or 4 feet behind me. Our clothes were still in the little pantry there, and it was my intention to go back and get in and then take all the signs off the window. We had our clothes in there. You know, we get so dirty doing this work. I was going up to the corner. We had to change our clothes. I was entitled to be in the premises.

Question. Had you paid your rent in advance?

Answer. Yes, in advance.

Question. And when you went in the door, had it been barricaded?

Answer. A very bad job of barricading, it was.

Question. How was it?

Answer. A shade roller or stick had been propped up against the handle of the door. All I had to do was, after unlocking the door, when I turned the key, I shook the door and the roller fell out, and then I walked in.

Question. Did Horigan go in with you?

Answer. He came in after me. I opened the door.

Question. After you and Horigan went in 741, what did you do?

Answer. We got our clothes out the first thing.

Question. What did you do with them?

Answer. We took them down to The Shade Shop.

Question. Then what did you do?

Answer. Then I started erasing the windows.

Question. With what?

Answer. With our knives.

Question. Erasing what?

Answer. "The Shade Shop, Window Shades." Then a barber next door, who was working there——

Question. Where was Mr. Klesner, was he on the premises?

Answer. No, he was down at the precinct.

Question. You and Horigan were there alone?

Answer. Alone.

Question. Did you or Horigan erase the sign, "The Shade Shop," from off the windows there?

Answer. All of them.

Question. You took all of them off?

Answer. Yes.

Question. Those were the ones you had put on?

Answer. Yes.

Question. After you erased these signs and had taken your clothes with you, what did you do next?

Answer. Locked the door.

Question. Where did you go?

Answer. I went to my place of business.

Question. That was 733 Twelfth Street?

129 Answer. Yes.

Question. What sort of signs did you have down there, then?

Answer. I had on the top of the building, not on the top of the building, between the second floor and the roof, I had "W. Stokes Sammons." Between the roof and my bay window and the window sills of the second floor windows I had "The Shade Shop" in raised letters, and "Window Shades" beneath them. On my store windows—I gave a contract out for my store windows, but the man kept on saying he would come up, and he never came up for about three weeks, and then he came up and then I put "The Shade Shop" in a green background with white letters on the main plate glass, and "Shades" on the sides.

Mr. HAWKINS. Will you mark this commission's Exhibit No. 30 for identification?

(The paper referred to was thereupon marked for identification, "Commission's Exhibit No. 30, Witness Sammons.")

Question (by Mr. HAWKINS). I have here now, Mr. Sammons, a photograph which has been marked for identification as commission's Exhibit No. 30. I will ask you to state if that is a photograph of your new place of business that you have testified to?

Answer. Yes, sir.

Question. It is a true and correct photograph of the premises at 733 Twelfth Street that you have testified to that you moved into?

Answer. It is.

Question. How soon after you moved in was that taken?

Answer. That was taken about December 1, I should say.

Question. You moved in about the first of November?

Answer. No, sir; that was taken about the 15th of November.

Question. Over the top this shows, "The Shade Shop." There is a sign on the building——

Answer. The sign men would not finish——

Question. I understand. Now wait a minute. There is a sign on the building, "The Shade Shop." Under that on the building are "Window Shades"?

Answer. Yes.

Question. After that were there any further signs put upon the building or upon this window shown in commission's Exhibit No. 30 for identification?

Answer. About two weeks later.

Question. Later from what?

Answer. From the time this photograph was taken, or about the first of December was when the sign man—I at last got the man who does my work to come up and put "The Shade Shop" on the main plate-glass window with a green background and white letters, and "Shades" on the side panels.

Question. Of the window?

Answer. Of the window.

Question. Were the letters of that window shown; was that in white letters on a green background?

Answer. The same.

Question. That was the sign that you used at these other places, as you have described?

130 Answer. Always.

Question. After you left what occurred up at the corner of Twelfth and H where Hooper & Klesner were located? Did they still stay in that corner?

Answer. Yes, sir.

Question. And did they start to engage in the business of manufacturing shades?

Answer. Yes, sir.

Question. Tell us about that. Did you have any knowledge of it?

Answer. Shortly afterwards.

Question. Shortly after when?

Answer. Shortly after I left.

Question. That would be shortly after the first of November?

Answer. Fifteenth.

Question. Fifteenth?

Answer. Fifteenth. They started in the manufacturing and selling of window shades, employing a man to make them and hang them.

Question. Who was that man; do you know?

Answer. No, sir; I do not know his name, sir. They had a couple there. I know the last man's name.

Question. Did they utilize in any way the workshop that you had formerly occupied there?

Answer. The same place I occupied.

Question. What signs, if any, did they put on the building?

Answer. They put the double signs that I had previously except for the word "The." They dropped the word "The."

Question. They put on a sign "Shade Shop"?

Answer. Same color, same letters, and everything.

Mr. HAWKINS. Mark these photographs "Commission's Exhibits 31 and 32," for identification.

(The photographs referred to were thereupon marked for identification, "Commission's Exhibits Nos. 31 and 32, Witness Sammons.")

Question (by Mr. HAWKINS). I now hand you two photographs which have been marked as commission's Exhibits Nos. 31 and 32, for identification, and ask you to tell us what those photographs are and when they were taken.

Answer. These were taken——

Examiner DUNHAM. Refer to them by the number on the back, please sir.

The WITNESS. Commission's Exhibits Nos. 31 and 32 were taken at the same time. Commission's Exhibit No. 31 was taken——

Question (by Mr. HAWKINS). About how soon after the first of November, 1915, when you left?

Answer. About two weeks, about the 15th of November.

Question. Now, those two photographs that you have there in your hands, show the signs "Shade Shop" in the middle of the window?

Answer. Yes, sir.

Question. And on each window?

Answer. Yes.

Question. Is that the sign that you referred to?

131 Answer. Yes, sir.

Question. Now, commission's Exhibit No. 32, for identification, which side of the storeroom is that? Is that a picture of the H Street side of the Twelfth Street side?

Answer. The Twelfth Street side.

Question. And commission's Exhibit No. 31 is which side?

Answer. The H Street side.

Question. Were you present when those photographs were taken?

Answer. I was.

Question. In commission's Exhibit, for identification, No. 31, there is a picture of a man. The photograph shows a man standing in the window. Did you see that man in there?

Answer. I did.

Question. What was he doing?

Answer. Painting the signs on the window.

Question. What signs was he painting?

Answer. He was lettering these—you understand what I mean—you have to go around with black on there—outline the letters.

Question. Did you see that man doing the same thing on the Twelfth Street side?

Answer. No, sir.

Question. You did not?

Answer. No, sir.

Mr. HAWKINS. Now, I offer commission's Exhibits Nos. 30, 31, and 32, which have been marked for identification, in evidence, and which have been introduced heretofore in another case. I now offer them with the reservation that I will later either have exact copies of them substituted in our record, or have photostatic copies of them made in order that I may return these originals which are exhibited in another lawsuit, as you can see.

Examiner DUNHAM. Mr. Hawkins, if it was testified I do not recall it, but I think it is important; one of those pictures is a picture of the store that he occupied after he moved, was it not?

Mr. HAWKINS. Yes, the first one.

Examiner DUNHAM. And the other two were pictures of the store that he left?

Mr. HAWKINS. Yes.

Examiner DUNHAM. I thought that was important, and that that should be shown in this connection.

Mr. HAWKINS. I guess I did not make it clear.

Examiner DUNHAM. I do not know whether he testified or whether I overlooked it.

Mr. HAWKINS. I want to be certain on that, so I will ask him another question.

Question (by Mr. HAWKINS). Commission's Exhibits Nos. 31 and 32 represent the store that you formerly occupied at the corner of Twelfth and H Street; is that correct?

Answer. Yes, sir.

Question. And which you had subleased a portion of from Hooper & Klesner, as you have testified to?

Answer. Yes, sir.

Question. And commission's Exhibit No. 30 is a photograph of the storeroom that you moved to at 733 Twelfth Street?

Answer. Yes, sir.

132 Question. On the last Sunday in October, in the year 1915?

Answer. Yes, sir.

Question. Now, there has been introduced, Mr. Sammons, while we were on the subject of photographs, respondent's Exhibit No. 1, which was a photograph taken along about January or February of this year. I will ask you if, with the exception of this sign on the H Street side, the "Removal Sale," there is any difference? Is there any difference in the signs as they appear in that photograph?

Answer. That is the same sign.

Question. Wait a minute. Is there any difference shown there, or are they the same as they were when you sublet part of the premises from Hooper & Klesner, which was prior to November 1, 1915, and if there is any difference, what is it?

Answer. The same letters; the same sign that I had on my windows when I was with Hooper & Klesner. Where "Shade Shop" is, I had "The Shade Shop," and where "Shade Shop" is, I had "The Shade Snop."

Question. Did you cause in any way the sign to be placed on the windows as shown in that exhibit, "Shade Shop"?

Answer. No, sir; I never authorized them.

Question. Did you ever authorize Hooper & Klesner to do that?

Answer. No, sir.

Question. Did you ever authorize anybody?

Answer. No, sir.

Question. Was that done with your permission?

Answer. No, sir.

Question. Now, Mr. Sammons, you said that Hooper & Klesner started out to manufacture shades, but that you did not know the name of the man.

Answer. I do not know the name of the first man.

Question. They put the sign "Shade Shop" on their windows as you have told us?

Answer. Yes, sir.

Question. Did they have any delivery trucks or automobiles?

Answer. They had an old truck.

Question. Did they have any sign on that?

Answer. Not then, when I was with them.

Question. When you were with them did they have any on the truck, if you know?

Answer. They had "Hooper & Klesner, Paper Hangers & Painters."

Question. After you left them, did you see any change in the sign on their truck?

Answer. After I left them they got a Ford truck.

Question. Was it a delivery truck?

Answer. A delivery truck.

Question. What sign was on it?

Answer. "Window Shade Shop."

Question. Did you, after you left them and went to 733 Twelfth Street, ever get a truck?

Answer. I got one in the last two months of Twelfth and H Streets.

Question. You got a truck but did not have any sign on it?

133 Answer. I did have a sign on it, "The Shade Shop, 733 Twelfth Street," because I intended to move. I knew I was going to occupy that address, and so I just had the man paint that address on it.

Question. You had the truck painted how when you went to 733 Twelfth Street?

Answer. "The Shade Shop, Exclusive Manufacturers of Window Shades, 733 12th Street, W. Stokes Sammons."

Question. How long did you stay at 733 Twelfth Street?

Answer. Five years.

Question. During the five years you stayed there you were in what business?

Answer. Exclusive manufacture and sale of window shades.

Question. What advertising did you do?

Answer. I continuously advertised in the Evening Star and was advertising in the Post between three and four months in the year, and in the Herald the same.

Question. How did you advertise?

Answer. "The Shade Shop, 733 12th Street." And then there were other advertisements that Mr. Archibald put in.

Question. Did you advertise in any programs or magazines that you have spoken of?

Answer. In the Knights of Columbus Bulletin. I say "The Bulletin." I do not know what they call it. It is a paper they get out monthly. The labor papers; that is, the "Trade Unionist." It is published once a week.

Question. Did Mr. Luther Derrick at any time that you were occupying the premises with Hooper & Klesner, or after you left them and went to 733 Twelfth Street, ever object to your using the trade name "The Shade Shop"?

Answer. Never.

Question. Did Hooper & Klesner, after you left them, ever make any objection to your using the name "The Shade Shop"?

Answer. Never.

Question. Has anybody ever objected?

Answer. Never.

Question. During the five years that you were at 733 Twelfth Street where did you keep your bank account?

Answer. Oh, I still continued it at The Munsey Trust Company.

Question. Under what name did you keep it?

Answer. "The Shade Shop, W. Stokes Sammons."

Question. How did you sign your checks?

Answer. "The Shade Shop, W. Stokes Sammons."

Question. Did you keep it at the Munsey Trust Company during all the five years?

Answer. Up to three years ago.

Question. What did you do with it then?

Answer. Changed to The Merchants Bank.

Question. What name did you keep it in at The Merchants Bank?

Answer. "The Shade Shop, W. Stokes Sammons."

Question. How did you sign your checks?

Answer. "The Shade Shop, W. Stokes Sammons."

Question. When did you leave 733 Twelfth Street?

Answer. I left November 15, 1920.

134 Question. Last fall, November 15?

Answer. Yes, sir.

Question. Where did you move then?

Answer. 830 Thirteenth Street.

Question. Have you been there ever since?

Answer. I own my building.

Question. You say you own your building?

Answer. Yes.

Question. I wish you would tell us the signs you have got up there at 830 Thirteenth Street.

Mr. AHALT. I object to this on the same ground as I have heretofore objected in the previous testimony, that this inquiry has no relevancy to the inquiry made in this proceeding, as it relates to matters and facts which have occurred subsequent to the filing of the complaint.

Examiner DUNHAM. Now you may answer.

The WITNESS. I have the same signs.

Question (by Mr. HAWKINS). Tell us what they are.

Answer. I have the same signs at 830 that I had at 733 Twelfth Street.

Question. It is not the same identical sign?

Answer. The same identical one.

Question. On the window?

Answer. The same picture. The same identical one.

Question. Tell us what you got up there.

Answer. I got on the main plate glass, "The Shade Shop."

Question. In what letters and what colors?

Answer. Green background and white letters.

Question. What size.

Answer. Nine inches, I think.

Question. That is on your window, is it?

Answer. Yes.

Question. That is, you have the same white letters with a green background that you used at all the other places that you have told us about this afternoon?

Answer. Yes.

Question. They are the same sized letters?

Answer. The same size.

Question. It is a border sign, is it?

Answer. A border sign. The side windows have "Shades" on them.

Question. "Shades?"

Answer. Yes.

Question. Now, what if any other signs have you up there on Thirteenth Street besides these on the window? Have you any on the building?

A. I had "W. Stokes Sammons" between the second and third floor—I mean the third floor and the roof. "The Shade Shop" between the second story and the third story, and "Window Shades" between the first floor and the second story.

Question. What letterheads and billheads did you use?

Answer. The same that I have had for 15 years.

Question. The same as have been identified here as exhibits?

135 Answer. Green—I mean blue, with a dark blue ink. The same that I have always used.

Question. Commission's Exhibits Nos. 8 and 9 seem to be in green. Did you have these green?

Answer. Yes.

Question. Look at commission's Exhibits Nos. 8 and 9, and tell me if that is what you used?

Answer. Yes. I could not get the blue. It seems like sometimes I would give a man; tell him what to do, and he would print these up and he would make—knock off so much because he did not get the right color.

Question. What advertising are you doing? Do you advertise in the daily papers the same as you did before?

Answer. The same as I have always done.

Question. Have you changed your advertising in any manner?

Answer. Never.

Question. How about the truck?

Answer. The same—"The Shade Shop, Exclusive Manufacturers of Window Shades, 830 13th Street, W. Stokes Sammons."

Mr. HAWKINS. Please mark these "Commission's Exhibits Nos. 34 to 41, for identification."

(The papers referred to were thereupon marked for identification, "Commission's Exhibits Nos. 33, 34, 35, 36, 37, 38, 39, 40, and 41, Witness Sammons.")

Question (by Mr. HAWKINS). I now hand you, Mr. Sammons, commission's Exhibits Nos. 33 to 41, inclusive, and ask you to state what they are.

Answer. These are postal cards of orders I received at the different locations. I was at 733 Twelfth Street, Twelfth and H Streets, and 819 Fifteenth Street.

Question. You say they were orders?

Answer. Yes; orders.

Question. Were they received by you in the regular course of business?

Answer. Yes.

Question. Were they filled by you, these orders?

Answer. Yes, sir.

Question. Now, the names on the postal cards of various different concerns, "Weaver Brothers," "Stone & Fairfax," "Shannon & Luchs," were they all customers of yours?

Answer. Yes.

Question. Regular customers.

Answer. Yes.

Question. How long had they been your regular customers?

Answer. Shannon & Luchs—I still do work to-day for them. I have done work for them for about 10 years. Stone & Fairfax, I still do work for them to-day.

Question. Who are Shannon & Luchs?

Answer. They are real estate dealers, at 713 Fourteenth Street.

Question. Who are Stone & Fairfax?

Answer. Real estate dealers, at 1342 New York Avenue. I have been doing work for them for 12 or 15 years.

Question. Who are Moore & Hill?

136 Answer. Real estate operators, 1420 H Street. I have been doing work for them for about 10 or 12 years.

Question. What business are Weaver Brothers engaged in?

Answer. Real estate operators, at 735 Fifteenth Street. I still do work for them to-day.

Question. You say you have been doing work for these real estate concerns. What kind of work?

Answer. Manufacturing and installing window shades.

Question. Under what name did you operate?

Answer. I operate under the name of "The Shade Shop," but on some of these postal cards it is written, "Shade Shop"; they just cut off the "The."

Question. Those are the orders you received in the regular course of business in the mail?

Answer. Yes.

Mr. HAWKINS. I now offer commission's Exhibits 33 to 41, inclusive, in evidence.

(The postal cards so offered and identified as "Commission's Exhibits Nos. 33, 34, 35, 36, 37, 38, 39, 40, and 41, Witness Sammons," were received in evidence, and the same are forwarded herewith.)

Mr. HAWKINS. I wish you would mark these "Commission's Exhibits Nos. 42, 43, and 44, for identification."

(The papers referred to were thereupon marked for identification, "Commission's Exhibits Nos. 42, 43, and 44, Witness Sammons.")

Question (by Mr. HAWKINS). I now hand you, Mr. Sammons, what has been marked for identification as commission's Exhibit No 42. Now that, Mr. Sammons, which you hold in your hand is a piece of paper upon which has been pasted a newspaper clipping. I want you to say what that newspaper clipping is.

Answer. This clipping was cut out of the Evening Star of September 10, 1915. It is an advertisement I ran in the Evening Star.

Question. What would you say as to commission's Exhibits Nos. 43 and 44, for identification? Take Exhibit 43 first.

Answer. Commission's Exhibit No. 43 is a clipping of an adverment which I inserted in the Evening Star.

Question. Under what date?

Answer. February 29, 1912, 724 Eleventh Street.

Question. What is commission's Exhibit No. 44?

Answer. Commission's Exhibit No. 44 is a clipping of an advertisement I run in the Evening Star of January 30, 1918.

Question. Now, in your testimony heretofore you have told us about advertising in the Evening Star. Are those fair samples of all the advertising that you have detailed to us?

Answer. That caption of "The Shade Shop, 12th and H," has run continuously in the Evening Star for the last eight or nine years, with the exception of a couple of months—of about six months out of the year when I was with Mr. Derrick at 819 Fifteenth Street, he cut them out in order to cut down overhead expenses.

Mr. Hawkins. I now offer commission's Exhibits Nos. 42, 43, and 44 in evidence.

137 (The papers so offered and identified as "Commission's Exhibits Nos. 42, 43, and 44, Witness Sammons," were received in evidence and the same are forwarded herewith.)

Mr. HAWKINS. Mark these commission's Exhibits Nos. 45 and 46 for identification.

(The papers referred to were thereupon marked for identification, "Commission's Exhibits Nos. 45 and 46, Witness Sammons.")

Question (by Mr. HAWKINS). I now hand you what has been marked for identification, commission's Exhibits No. 45 and 46, and ask you to state what commission's Exhibit No. 45 is.

Answer. Commission's Exhibit No. 45 is a part of a letterhead.

Question. Whose letterhead?

Answer. Hooper & Klesner's. This is a part of a letterhead that has been used since I left their place.

Question. What would you say as to commission's Exhibit No. 46?

Answer. It is a billhead of Hooper & Klesner's since I have left their place.

Mr. HAWKINS. I now offer commission's Exhibits Nos. 45 and 46 in evidence.

(The papers so offered and identified as "Commission's Exhibits Nos. 45 and 46, Witness Sammons," were received in evidence, and the same are forwarded herewith.)

Mr. HAWKINS. Mark this as commission's Exhibit No. 47, for identification.

(The paper referred to was thereupon marked for identification. "Commission's Exhibit No. 47, Witness Sammons.")

Question (by Mr. HAWKINS). I now hand you what has been marked for identification as commission's Exhibit No. 47, which consists of three different pieces of paper. I ask you to say what those three different pieces of paper that are pasted on one piece of paper are. What is the first one on there?

Answer. The first one is an order.

Question. For what?

Answer. For window shades from L. S. Fristoe, real estate operator.

Question. Is that one which you received in the regular course of your business?

Answer. Yes, the address then was 1413 G Street.

Question. Did you fill that order?

Answer. Absolutely did. I do work to-day and did then, 10 years ago.

Question. The second sheet of paper pasted on here is what?

Answer. It is a bill from the Washington Herald Company, dated October 1, 1912, to "The Shade Shop, 724 11th Street," for advertisements for that paper.

Question. Whose advertisement was it?

Answer. "The Shade Shop."

Question. Which had been placed by you?

Answer. Placed by me.

Question. Did you pay for it?

Answer. I did.

Question. What was the nature of that advertising?

138 Answer. Window shades.

Question. Was that the advertising matter you have described in your testimony?

Answer. Of the numerous papers I have advertised in.

Question. What is the third sheet?

Answer. The third sheet is a bill from the Evening Star Company, dated March 27, 1912.

Question. What is that for?

Answer. Account of "The Shade Shop," at 724 Eleventh Street.

Question. What was it for?

Answer. It is for advertising of window shades in the Evening Star.

Question. Did you pay that bill?

Answer. I did.

Question. Was that advertising matter which you put in?

Answer. I did.

Question. It was of the character which you have described in your testimony heretofore?

Answer. There is the receipt, ad-writing; what they charged me for writing advertisements; Mr. Archibald.

Mr. HAWKINS. I now offer commission's Exhibit No. 47 in evidence.

(The paper so offered and identified as "Commission's Exhibit No. 47, Witness Sammons," was received in evidence, and the same is forwarded herewith.)

Mr. HAWKINS. Mark this "Commission's Exhibit No. 48," for identification.

(The paper referred to was thereupon marked for identification, "Commission's Exhibit No. 48, Witness Sammons.")

Question (by Mr. HAWKINS). I now hand you what has been marked for identification as Commission's Exhibit No. 48, of which there are three different pieces of paper on a single piece of paper, and ask you what they are.

Answer. These are receipted bills from Mr. Leon L. Cahoon.

Question. Bills for what?

Answer. For cleaning windows.

Question. At what place?

Answer. 724 Eleventh Street, in the years 1910, 1911, and 1912.

Question. Now explain how that window cleaning was done, and how this bill was presented, and who signed the bills, and all that.

Answer. This bill is a system Mr. Cahoon has. They have four cleanings a month, and every time the man cleans the windows you have to sign. It says, "Each signature is to show that the work has been satisfactory, and will be paid for as agreed."

Question. Those signatures showing that the work has been satisfactory, who made those?

Answer. Almost anybody in the place. In 1911—in November 23, 1910, my wife made that signature. In December 7, 1910, my wife made that signature. March 28, 1912, Mr. Horigan made that signature. In April, 1911, Mr. Horigan made that signature. In April 11, 1911, Mr. Horigan made that signature. April 25, 1911, I made the signature.

Mr. HAWKINS. I now offer Commission's Exhibit No. 48 in evidence.

139 (The paper so offered and identified as "Commission's Exhibit No. 48, Witness Sammons," was received in evidence, and the same is forwarded herewith.)

Mr. HAWKINS. Mark this as Exhibit No. 49, for identification.

(The paper referred to was thereupon marked for identification, "Commission's Exhibit No. 49, Witness Sammons.")

Question (by Mr. HAWKINS). I now hand you what has been marked for identification as Commission's Exhibit No. 49, which I want you to look at and which purports to be a letter from Mrs. E. V. Eldridge, and tell us what it is.

Answer. Mrs. Eldridge—this letter is from Mrs. Eldridge in acceptance of a figure I submitted her for window shades.

Question. Did you fill the order?

Answer. I did.

Question. Did she pay for them?

Answer. She did.

Mr. HAWKINS. I now offer Commission's Exhibit No. 49, in evidence.

(The paper so offer and identified as "Commission's Exhibit No. 49, Witness Sammons," was received in evidence and the same is forwarded herewith.)

Mr. HAWKINS. Mark this "Commission's Exhibit No. 50," for identification.

(The paper referred to was thereupon marked for identification, "Commission's Exhibit No. 50, Witness Sammons.")

Question (by Mr. HAWKINS). Commission's Exhibit No. 50, for identification, which I hand you, is a letter from——

Answer. Letter from Stewart Hartshorn Company.

Question. Who are they?

Answer. Manufacturers of shade rollers.

Question. Did you have any business with them?

Answer. I have had business with them under "The Shade Shop," and they write, as lots of these people do, just take "The" off and write "Shade Shop," you understand.

Question. What was your business with them?

Answer. Purchasing materials.

Question. Did you buy supplies from them; is that it?

Answer. Yes.

Question. That letter grew out of some transaction of that kind, did it?

Answer. Yes, sir.

Mr. HAWKINS. I offer Commission's Exhibit No. 50 in evidence.

(The paper so offered and identified as "Commission's Exhibit No. 50, Witness Sammons," was received in evidence and the same is forwarded herewith.)

Mr. HAWKINS. Mark these "Commission's Exhibits Nos. 51, 52, 53, and 54," for identification.

(The papers referred to were thereupon marked for identification, "Commission's Exhibits Nos. 51, 52, 53, and 54, Witness Sammons.")

Question (by Mr. HAWKINS). I hand you now what has been marked for identification as Commission's Exhibits Nos. 51 to 54, inclusive. Are those bills, similar bills, for supplies?

140 Answer. Commission's Exhibit No. 51 is a bill from Jay C. Wemple Co.

Question. Can't you look at them all and state whether they are bills for supplies?

Answer. Some are billed "The Shade Shop" and some "Shade Shop."

Question. Those are supplies that you bought from these different concerns?

Answer. Yes.

Question. That is the way they billed you?

Answer. That is the way they billed me.

Mr. HAWKINS. I offer Commission's Exhibits Nos. 51, 52, 53, and 54 in evidence.

(The papers so offered and identified as "Commission's Exhibits Nos. 51, 52, 53, and 54, Witness Sammons," were received in evidence, and the same are forwarded herewith.)

Mr. HAWKINS. Mark this "Commission's Exhibit No. 55" for identification.

(The paper referred to was thereupon marked, for identification, "Commission's Exhibit No. 55, Witness Sammons.")

Question (by Mr. HAWKINS). Commission's Exhibit No. 55, for identification, which I hand you, is what?

Answer. That is for the Washington Herald advertisement. A sheet for the business men of the city of Washington; what they call their telephone directory sheet. It is published every day in their paper, and they charge $1 a month for you to advertise in it. That was "The Shade Shop, 12th and H Streets."

Question. How did you advertise—as "Sammons" or "The Shade Shop"?

Answer. "The Shade Shop, 12th and H Streets, Northwest."

Question. That bill does not seem to be dated as to the year; what year would you say it was?

Answer. I could not tell you.

Question. Well, it was at Twelfth and H Streets, when you were there?

Answer. Yes.

Question. It was during the period you were there?

Answer. Yes, sir.

Mr. HAWKINS. I offer Commission's Exhibit No. 55 in evidence.

(The paper so offered and identified as "Commission's Exhibit No. 55, Witness Sammons," was received in evidence, and the same is forwarded herewith.)

Mr. HAWKINS. Mark this "Commission's Exhibit No. 56," for identification.

(The paper referred to was thereupon marked for identification, "Commission's Exhibit No. 56, Witness Sammons.")

Question (by Mr. HAWKINS). What is Commission's Exhibit No. 56, for identification?

Answer. It is my billhead when I went into 733 Twelfth Street, "The Shade Shop, W. Stokes Sammons, Proprietor."

Mr. HAWKINS. I offer Commission's Exhibit No. 56 in evidence.

(The paper so offered and identified as "Commission's Exhibit No. 56, Witness Sammons," was received in evidence and the same is forwarded herewith.)

141 Mr. HAWKINS. Mark this "Commission's Exhibit No. 57," for identification.

(The paper referred to was thereupon marked for identification, "Commission's Exhibit No. 57, Witness Sammons.")

Question (by Mr. HAWKINS). I now hand you Commission's Exhibit No. 57 for identification. Will you tell us what that is?

Answer. That is a letterhead that I used at 819 Fifteenth Street northwest, when I was with Luther L. Derrick.

Question. That is the letter that you have there, or is it a copy?

Answer. Yes.

Question. Is that an original letter to this man King, or is it a copy?

Answer. Copy.

Question. Now, the letter head there, I notice there seems to have been stamped out, "815 15th Street, Northwest," and underneath put "H Street and 12th, Northwest," and the date of the letter is October 19, 1914. Will you explain how that happened to be?

Answer. When I moved from Mr. Derrick's I took all of my stationery, billheads, and everything that had "The Shade Shop, W. Stokes Sammons, Manager, Exclusive Manufacturer of Window Shades." When I went to Twelfth and H Street I used this old stationery until I had new stationery printed. I used this old stationery.

(Discussion off the record.)

Question (by Mr. HAWKINS). This letter is what?

Answer. That is an estimate to Mr. King. I have been doing business with him for 15 years.

Question. That is a copy of the estimate?

Answer. Yes.

Question. You used your old letterhead there?

Answer. Old letterhead I had at 819 Fifteenth Street.

Mr. HAWKINS. I offer Commission's Exhibit No. 57 in evidence.

(The paper so offered and identified as "Commission's Exhibit No. 57, Witness Sammons," was received in evidence, and the same is forwarded herewith.)

Mr. HAWKINS. Mark this as Commission's Exhibit No. 58, for identification.

(The paper referred to was thereupon marked for identification, "Commission's Exhibit No. 58, Witness Sammons.")

Question (by Mr. HAWKINS). I hand you what has been marked for identification as Commission's Exhibit No. 58, and ask you to say what that is.

Answer. That is an order from the Maryland State College of Agriculture.

Question. An order for what?

Answer. Order No. 2547 for 35 window shades to be installed.

Question. Was the Maryland State College of Agriculture a customer of yours?

Answer. Yes, sir.

Question. Did you fill that order?

Answer. I did; yes, sir.

142 Question. Did it come to you in the regular course of business?

Answer. It did.

Mr. HAWKINS. I offer Commission's Exhibit No. 58 in evidence.

(The paper so offered and identified as "Commission's Exhibit No. 58, Witness Sammons," was received in evidence, and the same is forwarded herewith.)

Mr. HAWKINS. Mark these as Commission's Exhibits Nos. 59 and 60, for identification.

(The papers referred to were thereupon marked for identification "Commission's Exhibits Nos. 59 and 60, Witness Sammons.")

Question (by Mr. HAWKINS). I now hand you what has been marked "Commission's Exhibits Nos. 59 and 60," for identification, and ask you what those are? Are those bills for supplies?

Answer. Yes.

Question. That you had bought from those concerns?

Answer. Yes, sir.

Question. In the regular course of business?

Answer. Yes.

Question. That is the way they billed you?

Answer. Yes, sir.

Mr. HAWKINS. I offer Commission's Exhibits Nos. 59 and 60 in evidence.

(The paper so offered and identified as "Commission's Exhibits Nos. 59 and 60, Witness Sammons," were received in evidence, and the same are forwarded herewith.)

Mr. HAWKINS. Mark this as Commission's Exhibit No. 61, for identification.

(The paper referred to was thereupon marked for identification "Commission's Exhibit No. 61, Witness Sammons.")

Question (by Mr. HAWKINS). I now hand you Commission's Exhibit No. 61, for identification. State what that is?

Answer. That is an order from James B. Henderson.

Question. Is that the Mr. Henderson that testified here in this case?

Answer. No.

Question. This is another Henderson?

Answer. Yes; he is a draper man on G Street.

Question. Is he a customer of yours?

Answer. Yes.

Question. Did you fill the order?

Answer. I did.

Mr. HAWKINS. I now offer in evidence Commission's Exhibit No. 61.

(The paper so offered and identified as "Commission's Exhibit No. 61, Witness Sammons" was received in evidence, and the same is forwarded herewith.)

Mr. HAWKINS Mark this as Commission's Exhibit No. 62, for identification.

(The paper referred to was thereupon marked for identification "Commission's Exhibit No. 62, Witness Sammons.")

Question (by Mr. HAWKINS). I show you Commission's Exhibit No. 62, for identification. What is that?

Answer. This is an order from R. W. Henderson, 1109 F Street, NW.

143 Question. Is that another Henderson?

Answer. There is one on G Street and one on F Street.

Question. Is that an order for shades?

Answer. An order for shades.

Question. Is he a customer of yours?

Answer. He is.

Question. Did you receive that order in the regular course of business and fill it?

Answer. Yes, sir.

Mr. HAWKINS. I offer commission's Exhibit No. 62 in evidence.

(The paper so offered and identified as "Commission's Exhibit No. 62, Witness Sammons," was received in evidence, and the same is forwarded herewith.)

Mr. HAWKINS. Mark this "Commission's Exhibit No. 63," for identification.

(The paper referred to was thereupon marked for identification, "Commission's Exhibit No. 63, Witness Sammons.")

Question (by Mr. HAWKINS). I now hand you commission's Exhibit No. 63, for identification, and ask you to state what that is.

Answer. That is an order from the Walter Reed General Hospital.

Question. Did you receive that in the regular course of business?

Answer. Yes. It was addressed to "Shade Shop, 733 12th Street, Northwest."

Question. Was that order filled?

Answer. Filled by me.

Mr. HAWKINS. I offer commission's Exhibit No. 63, in evidence.

(The paper so offered and identified as "Commission's Exhibit No. 63, Witness Sammons," was received in evidence, and the same is forwarded herewith.)

Mr. HAWKINS. Mark this for identification "Commission's Exhibit No. 64."

(The paper so referred to was thereupon marked for identification "Commission's Exhibit No. 64, Witness Sammons.")

Question (by Mr. HAWKINS). I hand you commission's Exhibit No. 64, for identification, and ask you what that is.

Answer. This is an order from the depot quartermaster of the War Department.

Question. For what?

Answer. Window shades?

Question. Did you receive that in the regular course of business?

Answer. I did. It was addressed to "Shade Shop, 733 12th Street, Northwest."

Question. Did you fill that order?

Answer. I did.

Mr. HAWKINS. I offer commission's Exhibit No. 64 in evidence.

(The paper so offered and identified as commission's Exhibit No. 64, Witness Sammons," was received in evidence, and the same is forwarded herewith.)

Mr. HAWKINS. Mark this "Commission's Exhibit No. 65," for identification.

(The paper referred to was thereupon marked for identification "Commission's Exhibit No. 65, Witness Sammons.")

Question (by Mr. HAWKINS). I hand you commission's Exhibit No. 65, and ask you to state what that is.

144 Answer. That is an order from the A. C. Moses Construction Co. for window shades.

Question. Who is the A. C. Moses Construction Co?

Answer. They are real estate operators and builders.

Question. In Washington?

Answer. 916 New York Avenue NW.

Question. Washington, D. C.?

Answer. Yes.

Question. Did you receive that in the regular course of business?

Answer. Yes, for shades, to be delivered at 403 Rock Creek Church Road.

Question. Did you fill that order?

Answer. I did.

Mr. HAWKINS. I offer commission's Exhibit No. 65 in evidence.

(The paper so offered and identified as "Commission's Exhibit No. 65, Witness Sammons," was received in evidence, and the same is forwarded herewith.)

Mr. HAWKINS. Mark this "Commission's Exhibit, for identification, No. 66."

(The paper referred to was thereupon marked for identification "Commission's Exhibit No. 66, Witness Sammons.")

Question (by Mr. HAWKINS). I hand you herewith what has been marked for identification as commission's Exhibit No. 66, and ask you to state what that is.

Answer. It is an order from H. L. Rust.

Question. Who is H. L. Rust?

Answer. He is a real estate broker.

Question. Of 1400 H Street, NW.?

Answer. Yes, sir.

Question. Is he a regular customer of yours?

Answer. Yes, sir.

Question. Is that the concern that Mr. Bowie, who testified yesterday, is connected with?

Answer. Yes, sir.

Question. Did you fill that order?

Answer. I did.

Mr. HAWKINS. I offer commission's Exhibit No. 66 in evidence.

(The paper so offered and identified as "Commission's Exhibit No. 66, Witness Sammons," was received in evidence, and the same is forwarded herewith.)

Mr. HAWKINS. Mark this for identification "Commission's Exhibit No. 67."

(The paper referred to was thereupon marked for identification "Commission's Exhibit No. 67, Witness Sammons.")

Question (by Mr. Hawkins). I show you commission's Exhibit No. 67, for identification, and ask you to state what that is.

Answer. That is an order from Walter J. Proctor Co., awning manufacturers.

Question. Is that a Washington concern?

Answer. Yes, sir; Washington, D. C.

Question. Did you receive that in the regular course of business?

Answer. Yes, sir.

145 Question. Did you fill that order?

Answer. Yes, sir.

Mr. HAWKINS. I offer commission's Exhibit No. 67 in evidence.

(The paper so offered and identified as "Commission's Exhibit No. 67, Witness Sammons" was received in evidence, and the same is forwarded herewith.)

Mr. HAWKINS. Will you mark this as commission's Exhibit No. 68 for identification?

(The paper referred to was thereupon marked for identification "Commission's Exhibit No. 68, Witness Sammons.")

Question (by Mr. HAWKINS). I hand you commission's Exhibit No. 68, marked for identification, and ask you to state what it is.

Answer. Commission's Exhibit No. 68 is a purchasing order from the American National Red Cross, Washington, D. C.

Question. Did you receive that order in the regular course of business?

Answer. I did.

Question. Did you fill that order?

Answer. Yes, sir.

Mr. HAWKINS. I offer commission's Exhibit No. 68, for identification, in evidence.

(The paper so offered and identified as "Commission's Exhibit No. 68, Witness Sammons," was received in evidence, and the same is forwarded herewith.)

Mr. HAWKINS. Will you mark these as commission's Exhibits Nos. 69 and 70?

(The papers referred to were thereupon marked for identification "Commission's Exhibits Nos. 69 and 70, Witness Sammons.")

Question (by Mr. HAWKINS). I hand you commission's Exhibits Nos. 69 and 70, for identification, and ask you to state what they are.

Answer. Commission's Exhibit No. 69 is an order from Weaver Bros., real estate operators.

Question. What is commission's Exhibit No. 70?

Answer. Commission's Exhibit No. 70 is an order from Weaver Bros., real estate operators.

Question. Orders for what?

Answer. Window shades.

Question. Did you receive those in the regular course of business?

Answer. I did.

Question. Did you fill them?

Answer. I did.

Mr. HAWKINS. I offer commission's Exhibits Nos. 69 and 70 in evidence.

(The papers so offered and identified as "Commission's Exhibits Nos. 69 and 70, Witness Sammons," were received in evidence, and the same are forwarded herewith.)

Mr. HAWKINS. Will you mark this for identification as commission's Exhibit No. 71?

(The paper referred to was thereupon marked for identification "Commission's Exhibit No. 71, Witness Sammons.")

Question (by Mr. HAWKINS). I hand you commission's Exhibit No. 71 for identification, and ask you to state what it is.

146 Answer. It is an order from the A. C. Moses Construction Co., real estate operators and builders.

Question. Is that the same concern you spoke of a little while ago?

Answer. Yes, sir.

Question. Did you receive that in the regular course of business?

Answer. Yes, sir.

Question. Did you fill that order?

Answer. Yes, sir; I did.

Mr. HAWKINS. I offer commission's Exhibit No. 71 for identification in evidence.

(The paper so offered and identified as "Commission's Exhibit No. 71, Witness Sammons," was received in evidence and the same is forwarded herewith.)

Mr. HAWKINS. Will you mark this for identification as commission's Exhibit No. 72?

(The paper referred to was thereupon marked for identification "Commission's Exhibit No. 72, Witness Sammons.")

Question (by Mr. HAWKINS). I hand you commission's Exhibit No. 72, for identification, which seems to be a receipt from Hooper & Klesner; is that correct?

Answer. It is.

Question. Will you explain how that came about?

Answer. This is a receipt for $56.75 for rent, telephone, stenographer's service, towel service, window washing, as per our agreement when we went into the building. That is what I was to pay a month for this service, one-half of everything.

Question. That receipt represents the settlement pursuant to the agreement you have outlined heretofore in your testimony with Messrs. Hooper & Klesner?

Answer. Yes, sir.

Question (by Mr. AHALT). Just a moment. You do not pretend that is a receipt in full?

Answer. For a month. He says, for a month.

Mr. AHALT. Your question, I believe, was along the line that it was in the form of an agreement with Hooper & Klesner?

Mr. HAWKINS. I thought I said pursuant to the agreement. I did not want the record to show that. My understanding is that he testified that when he went with Hooper & Klesner he was to pay half of the overhead there, and that was one of the receipts. No, that was not in final settlement. I did not intend to say that it was in final settlement.

I offer now Commission's Exhibit No. 72, in evidence.

(The paper so offered and identified as "Commission's Exhibit No. 72, Witness Sammons," was received in evidence, and the same is forwarded herewith.)

Question (by Mr. HAWKINS). Have you at any time authorized Mr. Derrick or Messrs. Hooper & Klesner, or anyone to use the name "The Shade Chop"?

Answer. I have not.

Question. Have you ever given a sign or sold any right, title or interest into that name?

Answer. I have not.

147 Question (by Mr. AHALT). I object to that latter question and answer on the grounds as stated in the previous objections, that it calls for a conclusion of law as to what his actions or transaction might have amounted to.

Question (by Mr. HAWKINS). You have related and told us how in the fall of 1915, about the first of November, you moved away from the corner of Twelfth and H Street to three doors south on Twelfth Street. You have described the signs you had on your building and the signs that were on Messrs. Hooper & Klesner's store. Did you receive any complaints, after you had moved, from customers or prospective customers about any confusion resulting from those signs?

Answer. I did.

Question. How frequently did you receive those complaints, would you say?

Answer. I should say once or twice a week.

Question. For how long a time?
Answer. The entire period.
Question. That was five years you were there?
Answer. Five years.
Mr. HAWKINS. You may cross examine.
Mr. AHALT. At this late hour, Mr. Examiner, I am afraid we would not get very far, and I think we might as well go over.
Examiner DUNCAN. I believe you gentlemen agreed that we would not have any session tomorrow or Monday, for reasons satisfactory to both sides, and that we would reconvene next Tuesday morning, so it is ordered that we now adjourn to reconvene at 10 o'clock, Tuesday morning, April 19.
(Thereupon, at 4.20 o'clock p. m., an adjournment was taken until 10 o'clock a. m., April 19, 1921.)

[Copy No. 1]

Before the Federal Trade Commission

Federal Trade Commission vs. Alfred Klesner, doing business under the trade name and style of Shade Shop, Hooper & Klesner. Docket No. 696

Washington, D. C., April 19-20-21-22, 1921

Hulse & Allen, official reporters, Whitford Bldg., Washington, D. C.

HULSE & ALLEN, OFFICIAL REPORTERS,
Whitford Bldg., Washington, D. C.

This is to certify that the within proceedings before the Federal Trade Commission in the case of Federal Trade Commission vs. Alfred Klesner, doing business under the trade name and style of Shade Shop, Hooper & Klesner, Docket No. 696, were had as herein appears, and that this is the original transcript thereof for the files of the commission.

HULSE & ALLEN, *Official Reporters.*

148 Before the Federal Trade Commission

[Title omitted.]

ROOM 2702, FEDERAL TRADE COMMISSION BUILDING,
Washington, D. C., Tuesday, April 19, 1921.

Met pursuant to adjournment at 10 o'clock a. m.
Before: Examiner J. J. Dunham.
Appearances: As heretofore noted.

PROCEEDINGS

Mr. HAWKINS. I forgot to ask Mr. Sammons two or three questions Friday and I would like to ask him now in conclusion, and then Mr. Ahalt may proceed with his cross examination.

W. STOKES SAMMONS, the witness on the stand at the time of adjournment resumed the stand and testified further as follows:

Direct examination (continued) by Mr. HAWKINS:

Question. Mr. Sammons, in your testimony Friday last, you went into detail concerning the time that you were located at No. 819 Fifteenth Street, and as I recall it, you said that after you left there Mr. Luther L. Derrick installed his nephew in the business of making shades or selling them?

Answer. Not after I left; before I left.

Question. Well, after you left?

Answer. He took charge.

Question. Mr. Derrick's nephew took charge?

Answer. Yes.

Question. Now, after you left what signs were there on the building with reference to the business of selling shades there?

Answer. The two original signs had "The Shade Shop" between the middle, north, and the north window and the middle window, south window—there was a space about 4 by 8 or 10 which was "The Shade Shop" previously.

Question. You took those away, as I understood you?

Answer. No; I did not.

Question. What came up?

Answer. He took—had a sign painter paint over "The" and put "Derrick"; "Derrick's Shade Shop."

Question. "The Derrick Shade Shop." What sign, if any, did he have on the automobile truck delivery wagon?

Answer. He never had any until some time after that, which I can not tell, about five or six months; he bought a Ford roadster and had "Derrick Shade Shop, 819 15th Street" on the side doors.

Question. Mr. Sammons, you testified that you had been engaged during this period exclusively in manufacturing and selling window shades. I wish you would tell me who else in the city of
149 Washington or in the District of Columbia is now or has been for the past 5 or 10 years engaged exclusively in manufacturing and selling window shades?

Answer. There has not been since I have been in business 20 years, about, anybody has ever engaged in the exclusive manufacturing of window shades in the city of Washington, D. C.

Question. And selling, too?

Answer. And manufacturing and selling window shades.

Question. During that time, to your knowledge, have you ever District of Columbia, to your knowledge, who has used the trade name "The Shade Shop" in selling or dealing in window shades in any manner?

Answer. Never; except myself.

Question. I mean other than yourself?

Answer. Yes.

Question. During this 15 or 20 years has there been anybody in the known of anyone, any place outside of Washington and the District of Colulmbia or anywhere in the United States dealing in or manufacturing window shades and trading under the name of "The Shade Shop?"

Answer. I purchase material from every manufacturer of shade cloth and rollers in America. I have been in their offices and I have interviewed with managers and salesmen. They have never known in their accounts or never received reply from any firm in the United States with the trade name "The Shade Shop."

Question. Other than yours?

Answer. Other than mine.

Mr. HAWKINS. You may cross-examine.

Cross-examination by Mr. AHALT:

Question. Just right here, Mr. Sammons, you do not mean to say that you have been in all the concerns' offices which have manufactured shades in the United States, or did I misunderstand you in your last statement?

Answer. Mr. Ahalt, there are not very many manufacturers. Only about four manufacturers of window shades in the United States.

Question. That you know of?

Answer. I know there are only four; well, possibly—I will name them; The Columbia Mills is a manufacturer; the Stewart Hartshorn Co. is a manufacturer; the J. W. Brenneman Co. is a manufacturer; the Western Shade Cloth Co.; the Interstate Shade Cloth Co. Those are the only manufacturers of window shades, cloth, and spring rollers in the United States. There are lots of jobbers, you understand.

Question. Mr. Sammons, what is a shade shop? You use that word in connection with your business. What is a shade shop?

Answer. "The Shade Shop" is the style of my business.

Question. I say what is a shade shop?

Answer. A shade shop—I have never heard of a shade shop.

Question. What would you say a shade shop is? You use the word. You are familiar with it. What idea do you intend to convey to the public by the use of such a word?

150 Answer. Well, when I style my firm as "The Shade Shop"—at that time there was one place in Washington that had styled their firm as a shop—that was the Violin Shop on New York Avenue.

Question. What?

Answer. Violin Shop.

Question. Violin Shop?

Answer. Yes; I got that name when I was in Atlantic City on the boardwalk—the different places that had held exclusive stuff. They styled their name as a shop, and I started my business as that name, as styling that name, and that name is The Shade Shop and that is my own business.

Question. Tell us, now, what idea you intend to convey to the public as to the business which you conduct when you use the words "The Shade Shop?"

Answer. Well, by my signs "The Shade Shop" I had always had window shades next to it. I am speaking of when I had a bay window, you understand. I had samples of window shades in my windows. Now, I tried to convey to the public that I was an exclusive manufacturer of window shades; that I handled nothing but window shades.

Question. Did you intend to convey to the public the idea that you made shades on the premises?

Answer. I did.

Question. Did you consider that in the use of that name, "The Shade Shop" that it conveys a meaning to the public which might otherwise, or by the use of other names convey the same meaning as to the character of the business conducted there?

Answer. Mr. Ahalt, there are about three or four shops in the city of Washington. The Umbrella Shop, an exclusive umbrella place; the Corset Shop is an exclusive corset shop. The Shade Shop is an exclusive window-shade shop. Now, these people who run the places are people who own their business and did nothing else but that business, and displayed their material in the windows.

Question. I wish you would answer the question as I put it. I do not believe you answered it. Your answer is not responsive.

Answer. I did not understand.

Mr. AHALT. Mr. Reporter, read the question.

(Thereupon, the reporter read the pending question.)

The WITNESS. I do.

Question (by Mr. AHALT). You do what?

Answer. Well, read that thing again. I thought I answered that question. Read it over again.

(Thereupon, the reporter again read the pending question.)

The WITNESS. It means if I use the—no man uses window shades—is that what you mean——

Question (by Mr. AHALT). I will put the question this way: Could you have used any other word which would have conveyed to the public the same meaning as to the character of the business that you conducted on the premises?

Answer. Yes, I could use my name. If I put window shades underneath. The public would know I made window shades by putting my name, manufacturer of window shades.

Question. Would you state that the words, "window shades" used as a sign, advertising and business, would convey the same
151 meaning to the public as to the character of the business conducted there as the use of the words "Shade Shop"?

Answer. Well, there are paper hangers and painters and decorators.

Question. Mr. Sammons, I don't want to be interrupting you at any time, but try to get your answers as much responsive to the question as possible.

Mr. HAWKINS. Now, Mr. Sammons, the question calls for "yes" or "no." Answer it if you can possibly do it. Answer it, "yes," or "no" and then you have a right to make an explanation.

Mr. AHALT. My idea was to get the answers as much responsive to the question as possible.

(Discussion off the record.)

Examiner DUNHAM. Do your best to make your answers to his questions as responsive as you can, please.

The WITNESS. I will.

(Discussion off the record.)

The WITNESS. You want to get an idea, Mr. Ahalt, that if I had used my name, would it answer the same purpose. You have not any idea that if somebody else would use window shades, that it would answer the same purpose.

Question (by Mr. AHALT). What I wanted to know was this, Mr. Sammons, whether you consider that you could ever convey the same meaning to the public by the use of some other words than "Shade Shop"—

Answer. Well, I really believe when—the reason I am using the name "The Shade Shop"—my experience with the public has been it is a window-shade shop, an exclusive place for window shades—I am using that as my trade name as The Shade Shop.

Question. By that name you convey to the public the idea that you make up and manufacture shades on the premises?

Answer. Yes. Is that the answer to your question?

Answer. That is all. Do you consider that the words "window shades" used, not in conjunction with the words "Shade Shop," or any other similar word, would convey the same meaning to the public that used the words "Shade Shop" do as to the business conducted on your premises?

Answer. No; I would not say it would.

Question. Then where you make up shades on the premises and in the fashion that you do, there is hardly any other word that would convey to the public the same meaning as the words "Shade Shop"?

Answer. No; that would not cover it. If a person made window shades on the premises, say for instance, Smith & Jones, and their place is a manufacturer of window shades I would figure that that was an exclusive window-shade place, or if I did not figure it was an exclusive window-shade place—if they handled wall papers or awnings; if they had, "manufacturers of window shades" I would figure they made them on the premises. That is the reason in all my advertisements and all my trucks and all my stationery I have "manufacturers of window shades."

Question. Suppose, as you have stated, that the words "paper hangers" and other descriptions of business were used in conjunction with the words "Shade Shop," would you say that they
152 conveyed to the public the meaning that the business conducted on those premises was, aside from the paper hanging and painting, so far as the words "Shade Shop" are concerned, would you consider that they made shades on the premises? In other words, we will take a case like Hooper & Klesner. What idea does the words "Shade Shop" on their windows convey to the public, in your opinion?

Answer. Well, in my opinion—that is a pretty bad question to ask, for my opinion. I figure my opinion is the same as the Federal Trade Commission's. Of course, you are using the name "Shade Shop"—if there was nobody else in town—I would figure that is the style of your name, "Shade Shop." Now, if there is any firm using the same as I use my "Shade Shop" advertising, in business, I would think the same as the Federal Trade Commission. I would figure you are using that name to draw the attention of the public from a well-established firm.

Question (by Mr. AHALT). I move to strike that answer out as not responsive.

The WITNESS. You asked me for it.

Mr. AHALT. And stating what the Federal Trade Commission might determine as being a meaning conveyed by such use of words and I submit this witness does not know what the Federal Trade Commission as a body thinks or knows about such.

Mr. HAWKINS. Just a minute, Mr. Witness. I submit that the question propounded by counsel to the witness was one calling for an opinion. He asked him what, in his opinion. Of course, the question was objectionable. I did not object to it. I had no objections to the witness's answer yet, but if counsel asks an objectionable question, in other words, asks the witness for an opinion as to the fairness or unfairness of the practices we are trying out, and then the witness gives him his opinion, why, I think the answer is correct and it should stand, and that it is responsive because the witness has told him what his opinion was.

Examiner DUNHAM. Mr. Witness, the counsel for the respondent does not seem to think that your answer was responsive to his question. Will you make another attempt at it and see if you can answer it?

Mr. HAWKINS. The motion is to have his answer stricken out.

Mr. AHALT. I am satisfied to leave that in the record, just as it went, with the objections of mine.

Question (by Mr. AHALT). Mr. Sammons, you have testified on your direct examination that you have been in this business since 1901 and that, to your knowledge, there is not a single person engaged in the same line of business, exclusive manufacturer of window shades, during that entire time. Now, I want to ask you

whether or not your opinion as to the meaning of the use of the words "Shade Shop" and as to the idea that such words convey to the public is based strictly upon what you have stated to be the opinion of the Federal Trade Commission? Is that the only basis for your opinion?

Answer. I tell you, Mr. Ahalt——

Question. Let us have the answer to the question.

Answer. I am going to answer the question.

Mr. HAWKINS. I want to enter an objection to his giving his opinion of the fact of the appropriation, if there has been one, of a trade name. That is what the commission is going to
153 ultimately decide and, of course, it is improver to ask him.

Mr. AHALT. I submit, before the witness answers this question, and replying to part of Mr. Hawkins' objection, that there has been no testimony in this case, so far, that the respondent has appropriated the trade name which Mr. Sammons claims he has adopted, to wit, "The Shade Shop," which he contends is his trade name, and that the witness has already testified sufficiently to qualify him to give an opinion, and he, having stated in a previous answer that his opinion was based upon, or that he had the same opinion that the Federal Trade Commission had with respect to the use of such similar words, or the adoption of another trade name, that I have a perfect right to ask him. My last question was as to whether or not his opinion, or the basis of his opinion, is exclusively based on the opinion of the Federal Trade Commission.

Question (by Mr. AHALT). Now, Mr. Sammons, I will ask you whether or not you base your opinion as given in the preceding answers as to what meaning the words "Shade Shop" convey to the public, exclusively upon the information that you have as to what the Federal Trade Commission's opinion is?

Answer. My idea of the——

Question. I ask for an answer to the question. You may explain it afterwards.

Mr. HAWKINS. Just answer "yes," or "no" and explain afterwards.

The WITNESS. Read that whole thing over please; that whole question.

(Thereupon, the reporter read the pending question.)

The WITNESS. I do not think I can answer that question, Mr. Ahalt.

Examiner DUNHAM. Mr. Witness, his question seems to desire an answer to this: Is the opinion that you have expressed as to the use of what meaning that term you used would convey to the public—is your opinion of that based on what your estimate is of the conclusion of the Federal Trade Commission upon that subject?

The WITNESS. It is, to this extent——

Mr. AHALT. Not what the conclusion is, Mr. Examiner. Not what the conclusion might be, but he has stated, as I recall his answer,

that he is of the same opinion as the Federal Trade Commission. I submit that the Federal Trade Commission has no opinion until this case is determined.

The WITNESS. "The Shade Shop" is recognized and known as the firm, or business, that manufactures window shades, if that is the answer you want to know.

Mr. HAWKINS. No, Mr. Witness, that is not what he wants.

Mr. AHALT. That is not what I want, Mr. Sammons. I tried to make my question plain enough.

The WITNESS. You did not quite make it plain enough.

Mr. AHALT. It might be my fault and it might be yours. The question was propounded on your direct examination and I am going to repeat it once more in order to attempt to make it more clear.

154 The WITNESS. Repeat it another way and may be I will answer it better.

Question (by Mr. AHALT). Mr. Sammons, I understood you to testify a moment ago that in response to a question by me as to what your opinion was as to the meaning of the words "Shade Shop" conveyed to the public. I understood you to state that your opinion was the same as the commission's opinion on that point; am I correct?

Answer. That was my answer.

Question. Now, I ask you now as to whether your opinion as to the meaning that is conveyed to the public by the use of the words "Shade Shop" is based exclusively upon what you believe to be the opinion of the Federal Trade Commission?

Answer. No.

Mr. HAWKINS. I want to enter my objection to it.

Examiner DUNHAM. I believe you said "no." Is that what you said?

The WITNESS. I tried to understand his question a little more. That was one answer that I gave, you understand. My other answer would be that a firm starts the name under "The Shade Shop," or, "Shade Shop," you understand—that would convey, provided it had window shades next to it—it could not have lamp shades, but if it had samples of window shades as a manufacturer of window shades, it would convey the idea that it was a place that would sell window shades.

Question (by Mr. AHALT). You mean to state that you would expect to find——

Answer. That is what I did. I put my name "The Shade Shop," because I sold and manufactured window shades.

Question. You mean to state that would expect to find in a place of business advertising "Shade Shop" merely a place where window shades may be purchased and not a place where window shades were made to order?

Answer. I would also figure——

Question. Let us have the answer to the question and then you can explain it.

Answer. I answered that question, for you before, Mr. Ahalt.

Mr. AHALT. I did not hear it.

Examiner DUNHAM. Can you answer it again, please?

The WITNESS. Can I put "a" or "The Shade Shop." It is either one, you mean, don't you?

Mr. AHALT. I think that question would call for——

Mr. HAWKINS. Read the question, Mr. Reporter.

(Thereupon, the reporter read the pending question as follows:)

"You mean to state that you would expect to find in a place of business advertising "Shade Shop" merely a place where window shades may be purchased and not a place where window shades were made to order?"

The WITNESS. If I found a place with "Shade Shop" on the window, I would—you asked my opinion—I would construe the place of business as a shade shop if it had "window shades" signs in the window and samples. I would construe that they either manufactured or sold them, or both.

155 Mr. AHALT. Mr. Reporter, read the question again and let him answer the question.

(Thereupon the reporter read the question before read.)

The WITNESS. I would not know, Mr. Ahalt, until I got inside, whether they just made to order or they had them ready made.

Question (by Mr. AHALT). Then you do not consider that the words "Shade Shop" particularly related to the making of shades, but merely as a place where shades were sold?

Answer. Making of shades, I should think.

Question. Now, Mr. Sammons, do the words "window shades" which you find on the windows, probably, of several business houses, in this city, and elsewhere convey the same meaning to your mind as to the character of the business conducted there as the words "Shade Shop" would?

Answer. I could not answer that unless I went inside. The man might make or sell them.

Question. As a matter of fact, there are many concerns in town here that sell window shades?

Answer. Yes.

Question. That is all they do, is to sell window shades?

Answer. Oh, no.

Question. I mean——

Answer. I stated I was the only exclusive window shade place in Washington.

Question. I want you to understand the question. I don't want to mislead you at all. There are many places that use the words "window shades" that merely have stock size window shades for sale, is that correct?

Answer. Yes; that is generally the department stores.

Question. I will put it this way. If a firm engaged in some other line of business used the words on their windows or elsewhere about

the place by way of advertising "window shades," would that convey to your mind the meaning that they sold window shades or made them on the premises?

Answer. I answered that question a while ago, Mr. Ahalt.

Question. Let us have the answer again.

Answer. I say, I could not tell until I went inside.

Question. You mean to state to this commission that from your experience of 20 years in the shade business, and being in and about the city and familiar with all the concerns that manufacture shades and concerns that sell window shades, stock size and so forth, that if you saw the words "window shades" on a store, that you would not know whether they made shades, manufactured them to order, or conducted a shade shop or what not unless you went inside?

Answer. Mr. Ahalt, yes, sir; I can answer that question in a second.

Question. I would like to have you do it.

Answer. Did not you say, of all my experience, and of all the firms that I knew in this business—why, sure, I know every firm that sells window shades and every firm that manufactures window shades, but I am the man that is in the business. An outsider would not know that. I thought you asked me that question, if I was an out-
156 sider, whether I would know. I know every firm that makes window shades and every firm that don't make window shades.

Question. Do you consider that by the use of the words "The Shade Shop" in your business that you convey to the public a meaning by the use of those words that you make shades on your premises?

Answer. I can answer that question by telling you that I use that name as my trade name.

Question. Just answer the question.

Answer. Oh, why, sure, because in all my advertisements I do say "manufacturer of window shades."

Question. When you were at Twelfth and H Streets, occupying the store with the respondent here, did you have on the windows at any place the words "manufacturers of window shades"?

Answer. I did not.

Question. You just stated, I believe, that you always used those words in connection with the words "Shade Shop"?

Answer. Do you remember the statement? I said in my advertisements and in my letterheads I did. On my trucks I did.

Question. When you were at 1403 New York Avenue you had this sign that you referred to across the second story of the building, this very large sign. Was there anything on that sign about exclusive manufacturer of window shades?

Answer. There was not.

Question. When you were in the building at 819 Fifteenth Street, and during the time that you were associated with Mr. Derrick to the extent that you have mentioned, did you use on any of the conspicuous signs on the front of the building the words "exclusive manufacturer of window shades"?

Answer. No, sir.

Question. When you were at 813 Fourteenth Street on the second occasion did you use "exclusive manufacturers of window shades" on any conspicuous signs on the front of the premises?

Answer. No, sir.

Question. Now, Mr. Sammons, you refer in your testimony almost invariably as to having always used on the upper panel of the glass or show windows on the premises you occupied at those various places a white letter sign with a green background, I believe. You do not mean to give the commission the impression that that use of that sign was exclusively in your business, do you?

Answer. I did.

Question. I mean as to the character of the colors and design, generally of that sign; not the words, of course. In other words, there are many places in the city of Washington and elsewhere that use the upper part of the show window with the same character of sign, that you use—that is, white letters with a green background. In fact, that is a very common way of advertising on show windows, is it not?

Answer. All colors; yellow, red—the United Cigars use red, exclusively.

Question. There are many that use white litters with a green background, are there not?

Answer. I guess so; yes, sir.

157 Question. You do not mean to convey the idea to the commission that you have any exclusive use of that sort or kind of advertising of your name?

Answer. I do.

Question. I mean aside from your name, now?

Answer. I do.

Question. How do you reconcile the fact that it is exclusive when you say it is exclusive?

Answer. I said I use that always in advertising to the public. I always use them; the same letters and everything.

Question. There are many concerns that use white letters with a green background?

Answer. Oh, yes; I have no patent. I can not use that exclusively. I can not do that, but I always use it.

Question. Now, Mr. Sammons, when you were at Eleventh Street, 724, and we will say beginning with the time that Mr. Derrick came to your assistance, was Mr. Derrick in your place of business very frequently?

Answer. Yes, sir.

Question. How frequently?

Answer. When he gave me orders, that was about one or twice a week; sometimes three or four times a week. Mr. Derrick did a nice business. He had——

Question. I am speaking from the time Mr. Derrick became connected with the business.

Answer. You means after he connected with the business?
Question. Yes.
Answer. Sometimes he just came—sometimes——
Question. Did you say twice a week?
Answer. Yes, sir.
Question. How long were you on Eleventh Street from the time hat Mr. Derrick became associated with you until you moved from hat place?
Answer. You do not want the exact date, do you?
Question. Approximately.
Answer. Eighteen months.
Question. Eighteen months?
Answer. Something like that.
Question. Mr. Horigan was around there practically all that time, mployed by you, was he not?
Answer. No; Mr. Horigan was driving an automobile for Mr. aker, and I think he mentioned Mr. Alexandria; he used to drive u—do you remember him, when he used to drive you—are you y relation to him [addressing one of counsel]?
Question by Mr. AHALT. That is immaterial.
Answer. He got a job as a chauffeur and was driving an auto- bile.
Question. Was he employed by you during that time?
Answer. Yes, sir; a great deal.
Question. Around the place?
Answer. No; he was outside man.
Question. Well, he came there every day, did he not?
Answer. He came there at 8 o'clock in the morning and put in his report at 5.30 in the evening.
Question. What did Mr. Horigan have to do with taking orders of y kind?
Answer. When I was not there he took orders—that is, about the y time he took orders was when I was not there.
Question. Was he rather familiar with your clientele, your cus- ers, and knew about whom you did business with?
Answer. Oh, yes, yes.
Question. Did he assist you in any way in making up the books or ounts; in taking orders or making up these cards you referred to, anything of the kind in connection with the business
Answer. No; but I think I can almost answer the question that want to ask me. Mr. Horigan—as I said, I did work for Mr. rrick at 1403 New York Avenue, at 1222 H Street and at 1649 K eet and at 733 Twelfth Street, previous to Mr. Derrick coming me. Mr. Derrick controlled Weaver Brothers' work and Swart- , Rheem & Hensey—if he was not on the outside; if he was on inside—I employed him, you understand; if he went out with work for any of the departments or Weaver Brothers, or Swart- , Rheem & Hensey, he knew he was hanging Derrick's work, and not have to be in the shop to know he did Mr. Derrick's work,

previous to when Mr. Derrick came with me. He never knew anything, even when we went to 819 Eleventh Street, that Mr. Derrick had anything to do with my business, either. I never let him know anything.

Question. Where are these books of account or cards or system of bookkeeping that you had while you were conducting your business at 724 Eleventh Street?

Answer. They have all been destroyed.

Question. Where are the accounts you kept while at 819 Fifteenth Street?

Answer. They have all been destroyed. Twelfth and H, they have all been destroyed.

Question. Mr. Sammons, since you have been up on, I believe, Fourteenth Street, is where you are now——

Answer. 830 Thirteenth Street.

Question. Thirteenth Street; have you had many complaints there recently about the confusion of this name?

Answer. I have, sir.

Question. By whom have the complaints been made, do you know?

Answer. That is only on the telephone.

Question. Who made these complaints, recent ones, since you have been on Thirteenth Street?

Answer. I did not take any record of it.

Question. None of these witnesses, who have testified here, were confused since you have been on Thirteenth Street?

Answer. No.

Question. Or since you have been away from Twelfth Street?

Answer. No.

Question. You did not make any note of these people that have been confused since you have been on Thirteenth Street?

Answer. No; I did not.

159 Question. Now, Mr. Sammons, tell us as briefly as you can just what you said to Derrick and what he had to say with reference to the proposal that you made and the arrangement that you entered into while on Eleventh Street, while you were in this financial entanglement that you spoke of.

Answer. Mr. Ahalt, I covered all that. Do you want me to go over that again, or do you want to cross-examine me on anything?

Question. Probably I can boil that down somewhat by asking questions in connection with it, myself. You are a little bit long winded. At any rate, I will try to get at it this way.

Now, just prior to the time that you spoke to Mr. Derrick, you stated that you had been to see several other parties with the idea of getting them to finance you?

Answer. That was a case of needing money. I had a lot of C. O. D.'s at the railroad station, stuff that come, bill of lading attached, and the jobs were waiting to be installed, and the material was in the

freight station, and I went to two or three people, but I did not get any assistance from any of them.

Question. You explained when you spoke to Mr. Derrick, just what your situation was, that you had orders for work and that you had material at the railroad station, and that you could not get it out because you did not have money?

Answer. Yes, sir.

Question. And that you wanted to get this material out; wanted to fill your orders, and so forth. Now, tell us just exactly, as near as you can recall, because I want your recollection to be as clear as possible, just what understanding you had with Mr. Derrick as to how he would be secured for any advances he made to you to get this material out of the railroad station freight house, and what interest he was to have in the business, and what control he was to have over the business, or what say he was to have in it, and briefly, tell us just what the arrangement was.

Answer. Well, in regard to his control and say, he had no control and no say, in my business, at all. That was understood. The only thing he was to do was the lending to me of money. When I was at 724 Eleventh Street, it was entirely different from 819 Fifteenth Street. At 724 Eleventh Street, I did all the ordering. All the stuff came under the firm's name, "The Shade Shop," bill of lading attached, C. O. D.

Question. I do not want to interrupt you, but just state, while you are on that, who placed orders after the material was taken out, which had been shipped with bill of lading.

Answer. Who placed the order?

Question. Yes; who made purchases after the first lot of goods——

Answer. I am trying to tell you. I said, at all times, 724 Eleventh Street.

Question. You placed the orders at all times?

Answer. I placed the orders, and the material would come in, and I would stock up, you see. I had the bank account then. I had charge of the money. We were not doing a very big business, you understand. If a bill of lading came, or if I did not have money, and say I was so much shy, why I would go to Mr. Derrick, at any time, if I was anything shy, and he would give me a check for
160 it, and I would go to the bank and get the check cashed, and get my material—supplies—out of the railroad station or express office.

Question. Now, what say would he have in the conduct of the business, or the disposition of the money?

Answer. Nothing to say about it.

Question. What did you mean when you stated here in your testimony that you had to make settlements to Mr. Derrick every week, showing——

Answer. Profits and loss.

Question. Wait awhile—showing net cost of each job, and the electric bills, the amount of those different amounts paid, and the expenses incurred, and such as that?

Answer. Well, because I told him I would give him a profit out of the business, not a profit out of the business—yes, it was a profit out of the business. I said to him that if he would lend me money to run my business that I would give him—let me have a drawing account, you understand—I would give him 90 per cent of the profit. Now, I ought to have had my head examined for ever doing it. You understand, I was on a limb. I did not have nothing. I would have taken a nigger if he offered—made the same proposition, if he had the money. I did not have any money to do business with. I purchased considerable material in Washington at Goldenberg's, Moses, and Woodward & Lothrop. I had to show him it was a square deal. I would have to show him every purchase, the amount of material I bought, and the amount of work I turned out, and I could not tell him at the end of my——

Question. What amount, if you can recall, approximately, was advanced in cash by Mr. Derrick, we will say, for the first six months? I believe you testified that you did not have any settlement for at least six months or more after you first started.

Answer. There were not any profits the first year.

Question. I say, what amount, if you can approximate it, did he advance you in cash for the purpose of carrying on this business?

Answer. I could not say, Mr. Ahalt—might have been $100. I recall one bill of lading was $150, or $175, and the C. O. D. was $55.

Question. Do you think it amounted to about $500, that he advanced you in cash?

Answer. Yes.

Question. Would it be $1,000?

Answer. Yes, sir; I would say $1,000.

Question. It might be more than that?

Answer. Oh, yes.

Question. What security did you give Mr. Derrick, aside from what you have stated here, that of 90 per cent of the profits in the business; what security did you give Mr. Derrick for these advances that he was making to you?

Answer. I gave him no security, at all.

Question. You gave him a note?

Answer. No security.

Question. No security?

Answer. No security.

Question. Then he was making all these advances to you of more than $1,000 during that time without any security whatever?

Answer. No security, at all.

161 Question. Except the possibility of sharing in the profits?

Answer. Sure.

Question. You stated, I believe, that the first six months there were no profits. About when was the business put upon a paying basis after Mr. Derrick went into it?

Answer. When we got up to 819 Fifteenth Street.

Question. That was 18 months or a couple of years?

Answer. No, I was just going on a little idea here. Do you want to look at these cards?

Question. Oh, no.

Answer. Yes, about 18 months.

Question. All during that time, he was advancing you money?

Answer. I do not say there were not any profits. There might have been a couple of hundred dollars, you understand.

Question. All of this time he was advancing you money, without any security to him by you, and without any say as to how the business should be conducted, or what expenditures should be made or what purchases should be made, or anything in the way of controlling the business, or having any say in it; he was doing that all during this time?

Answer. All during that time.

Question. I believe you testified that when you wanted a small quantity of even 10 yards of material, you would have to get Mr. Derrick's approval to purchase it, or have him purchase it?

Answer. I did not.

Question. Then, if you did testify to that in your direct examination, you wish to contradict it at this time?

Answer. I do not. I says when we went to 819 Fifteenth Street——

Question. Speaking of Eleventh Street. We have not gotten to Fifteenth Street yet.

Answer. Well, let me go to 819 Fifteenth Street for a little while.

Mr. HAWKINS. No; Mr. Ahalt is talking about Eleventh Street now.

The WITNESS. Wait a minute, Mr. Ahalt. There might have been a possible chance—Mr. Derrick might have said—now, he did complain about these C. O. D. charges. The C. O. D.'s, such as if a package came in for 35 cents, express charges—it was 60 cents, C. O. D., that is collecting the C. O. D., and sending it back. That counted up to a pretty big item, and he went ahead, then, and he had Bradstreet and Dun's rating, credit relations, I guess, with most anybody that he wanted to do business with—I could not very well, Mr. Ahalt, write to the Columbia Mills, and order 10 yards of material in the name of "The Shade Shop," because they had no C. O. D. bill of lading attached. It was on those occasions that I would telephone to Mr. Derrick that I needed, say, 10 yards of material, or something like that, and he would order it on his own stationery, to show that it was Luther L. Derrick.

Question. Then, when you testified awhile ago that while you were at Eleventh Street, you made all the purchases under the name of The Shade Shop, you were mistaken?

Answer. I am not mistaken. I did not mean every one of them—90 per cent of them.

162 Question. I understood you to say you did not have any credit with these out-of-town people, and that Mr. Derrick—in some instances you would call upon him to place these orders for you in view of the fact that he did have credit?

Answer. Yes, sir; that is the truth.

Question. Now, as to the volume of purchases made, would you say that most of these purchases made by Mr. Derrick were made in his name, or would they be made by you in the name of The Shade Shop?

Answer. All purchases made by me were made under the name, "The Shade Shop." Those purchases made by him were made under the name "Luther L. Derrick."

Question. Well, purchases, speaking of them as orders for material from out-of-town concerns—referring to the volume. Now, of the purchases, would you say that most of the orders placed for material from out-of-town concerns, were placed by you under the name of "The Shade Shop," or by Mr. Derrick under his own individual name?

Answer. Mr. Ahalt, let me correct you on one thing. I will ask you a question—you might say a volume of orders, but you do not say the volume of the purchases. I might purchase 25 orders at $2 apiece—$50—and I might purchase one order for $1,000.

Question. That is just exactly what I am trying to get at. I want you to state whether or not the real credit of the business that was done at 724 Eleventh Street was done under the name of Mr. Derrick, or whether it was done under the name of "The Shade Shop," by you.

Answer. "The Shade Shop" by me. Over half of it; 75 per cent of the orders were placed by me.

Question. These are credit orders you are referring to now?

Answer. I did not say anything about credit.

Question. I am asking you about credit orders.

Answer. The Shade Shop did not have any credit.

Question. All of the orders for out-of-town concerns where credit was asked for were placed by Mr. Derrick?

Answer. Absolutely; yes.

Question. Such purchases or orders as you placed under the name of "The Shade Shop," were for small orders, and for cash?

Answer. I told you we did not do any business.

Question. What?

Answer. You understand——

Question. Just answer the question.

Answer. Sure; absolutely.

Question. How much did Mr. Derrick allow you as a drawing account while you were at Eleventh Street?

Answer. $20 a week part of the time, and part of the time $25, when I demanded that I take more out of the—you understand the

arrangement was I was to draw so much money—that comes out of the profit. If it was $1,000 profit, and I drew $800—there was $200 left to be divided up.

Question. In other words, your drawing account was charged to the expense of the business?

Answer. Sure. I drew $100 one time.

163 Question. As a matter of fact, did not the increase to $25 per week take place when you moved to 819 Fifteenth Street?

Answer. It did not. It took place when I was living in the rear of 724 Eleventh Street.

Question. These advertisements in the Star that you have referred to, I believe you testified that you used "W. Stokes Sammons, Proprietor," in connection with those?

Answer. I did not.

Question. What did you use?

Answer. "The Shade Shop," only.

Question. Just "The Shade Shop"? Now, when you were on Eleventh Street, I believe Mr. Derrick was then on Vermont Avenue, 811 Vermont Avenue, or something like that?

Answer. That is true.

Question. While he was there, he perfected an arrangement to lease the entire building of 819 Fifteenth Street?

Answer. Yes, sir.

Question. And he suggested at that time that the business of "The Shade Shop" be brought to 819 Fifteenth Street and put under one roof?

Answer. He made the suggestion to me; asked me if I would come up there.

Question. I say, he suggested it?

Answer. He suggested it, Mr. Ahalt, and said we would all be under one roof. He made the suggestion to put a sign on the building, "Office Rooms for Rent." He had a lot of space up there. It was a big item for him for me to rent one of those places from him, and I did that, because Mr. Derrick was so good to me, you understand, and because I wanted to help him out, and occupy one of his spaces up there, and help him out with his rent.

Question. Suppose Mr. Derrick had said on that occasion, "Mr. Sammons, I am going to bring The Shade Shop to 819 Fifteenth Street"?

Answer. He could not have said that.

Question. He could not have said that?

Answer. Absolutely not.

Question. Do you mean that a man who had 90 per cent interest in the business could not do that?

Answer. I could stop him that quick, any time that I wanted to, you understand. I could have said, "Mr. Derrick, I do not need your assistance any more," and I could have left him, and it would have been all right.

Question. Then, that understanding in the first instance when he first came to you——

Answer. It was not stated how long I needed his assistance. He only knew that it was to be temporary, and as long as it was satisfactory to me, it was satisfactory to him.

Question. It was satisfactory to him to have $1,000 or more in the business there without any security, and as you contend, without having any say in the business for you to just quit any time?

Mr. HAWKINS. Just a minute; I want to object. It is based on the premises that at one time he owed him $1,000. There is no evidence that he ever owed him $1,000.

Mr. AHALT. I withdraw the question.

164 The WITNESS. I can answer the question.

Mr. HAWKINS. He has withdrawn it.

The WITNESS. I answered that question in my direct examination.

(Discussion off the record.)

The WITNESS. Now, Mr. Ahalt, when we were at 724 Eleventh Street, I told you Mr. Derrick—as I say, he bought $1,000 worth of stuff. Mr. Derrick never bought one dollar's worth of stuff that he did not need. If I had an order for $100 worth of stuff, he would buy $100 worth of material, but he never bought one dollar over. He never had anything in my place of business.

Question (by Mr. AHALT). Let us go back to the question.

Answer. I am getting to it now. When we went up there, Mr. Ahalt—now, here is where your security comes—when we went up there; when we arrived up there in December, the first of December, and after we got all straightened up, fixed up, and all ready to do business, with the usual designs, Mr. Derrick said he would buy, putting more stock in the place, and that was perfectly satisfactory to me, because the spring trade was coming, and I figured I could make more money by having a stock in the place than by buying cut shades.

(Discussion off the record.)

Question (by Mr. AHALT). Mr. Sammons, Mr. Derrick occupied for the paper hanging business, principally the first floor?

Answer. Yes; for his business, yes.

Question. When you went to 819 Fifteenth Street, Mrs. Scott was already in Mr. Derrick's employ?

Answer. Yes, sir; previous to that.

Question. Who made the suggestion that Mrs. Scott look after all the taking of orders, keeping of accounts, and answering the telephone, sending out bills, depositing funds, and so forth; the proceeds and the business in connection with the shade business there?

Answer. That was Mr. Derrick and I came to that agreement.

Question. I asked you who made the suggestion.

Answer. I made the suggestion.

Question. You are sure of that?

Answer. I am positive of it.

Question. Why did you make the suggestion, Mr. Sammons?

Answer. I made the suggestion because I got somebody to keep my books, to write my letters, keep carbon copies of my letters, which I never did before—follow-up orders; if I sent a man an estimate for $50; if I never heard from him in a few days, she would refer to it again, in a more businesslike way—I would write the man, telling him so-and-so; that on such and such a day I wrote him, submitting an estimate, and I would like to hear from him, and such things as that—and Mr. Derrick made a nominal fee of only $10 a week, which I thought I was getting the best of it.

Question. That $10 was charged to the expense of the shade business?

Answer. Oh, yes, sir.

Question. Does your answer that you made the suggestion apply to that part of this arrangement with reference to the depositing of funds, proceeds of the shade business in the name of Mr. Derrick in the bank?

165 Answer. While waiting for it to come in, he went to New York and bought about $2,000 worth of material.

Question. So that makes at least $3,000 that he had advanced?

Answer. Oh, my, no. He bought $1,000 worth of stuff, and I will say that he certainly used it up—why, when it would come in there was no stock to put in the place at all. I venture to say Mr. Derrick bought in the whole course of time $8,000 worth of material, if you want to get about how much material he had bought when he was with me; possibly around $10,000.

Mr. AHALT. Let us have the first part of that last answer.

Mr. HAWKINS. Read Mr. Ahalt's question.

(Thereupon the reporter read the first part of the last answer as requested.)

MI. HAWKINS. Read Mr. Ahalt's question.

(Thereupon the reporter read Ahalt's question, as follows:)

"Does your answer that you made the suggestion apply to that part of this arrangement with reference to the disposing of funds, proceeds of the shade business, in the name of Mr. Derrick in the bank?"

The WITNESS. Yes, sir, I did; that came under the same suggestion, because Mr. Derrick—then it was under C. O. D., under bill of lading attached, to come in. There was nothing that I had—I did not have any money to pay right off the bill of ladings and C. O. D. Everything was Bradstreet and Dun's credit, you understand, commercial credit with these firms. If we buy $2,000 worth of material, which I said we did—it might amount to $2,200—Mr. Derrick will know—we get 30 days' dating on that—we did not do that much business in a month then; that was in January and February—there was no business at all. Mr. Derrick was to pay that out of his checks, out of the bank account, and I suggested doing that; have all the money come in, have Mrs. Scott take care of

that, and then afterwards, say two or three months' time, when business had picked up, he would get the money back to pay that $1,000—if she was going to take care of the bookkeeping, and everything like that, she might as well take care of the money. It was all his money. I did not have any money.

Question. You are positive that all these suggestions about changes that were made when you went to 819 Fifteenth Street with reference to how the accounts should be kept; who was to look after them, and how the money was to be deposited and collected, were made at your suggestion, and not at Mr. Derrick's suggestion?

Answer. I don't say the banking. I am positive Mr. Derrick made mention about the banking.

Question. You suggested it in order to give him——

Answer. That was the whole conversation, you understand. I opened that suggestion up in regard to her taking charge of the books, and sending the estimates out, and mailing the bills, and taking the telephone messages, and switching them upstairs for my telephone upstairs—I had a branch upstairs. I had part of the office up there. I was always upstairs in the factory. In that conversation which we took at one time, the money matter was
166 brought up, and Mr. Derrick, of course, said she might as well take care of the money.

Question. Are you positive that you made the suggestions about everything in the way of changes in the manner of running the business, as you have stated, with the exception of the banking?

Answer. Yes, sir.

Question. And that Mr. Derrick did not make these suggestions?

Answer. Mr. Derrick did make a suggestion in regard to this banking.

Question. All the other suggestions were made by you

Answer. The other suggestions were made by me.

Question. Where were you; at 819 Fifteenth Street, or Eleventh Street?

Answer. No, sir; on Vermont Avenue.

Question. Did you conduct your business, "The Shade Shop" business, at 811 Vermont Avenue?

Answer. No, sir; I went to see him.

Question. Was that after Mr. Derrick had perfected this leasing arrangement, or before?

Answer. That was when he was making the arrangement for the lease.

Question. You are getting at or arriving at an arrangement prior to the time he entered into this obligation?

Answer. He spoke to me several times and said he wanted to get the building, but he would only use so much.

Question. You were negotiating an arrangement as to how you could use this building if he should get it; how and what arrangements you would make about the business at that time. That was prior to his actual leasing of this building?

Answer. No, sir; I did not see him. He might have leased and told me afterwards. It was around that time that he had the opportunity to get this building.

Question. But it was before you moved in there?

Answer. Yes, sir.

Question. And before he moved in there?

Answer. Yes, sir.

Question. I believe you stated awhile ago that he had some rooms, some signs on the 819 Fifteenth Street property, "Rooms For Rent" before you went up there?

Answer. No; he put that sign——

Question. Did not you testify to that awhile ago?

Answer. He put the signs up just as we went in the building. We were in the building.

Question. Did you testify, or is it a fact that Mr. Derrick had "For Rent" signs, or "Rooms for Rent," or "Offices for Rent," on 819 Fifteenth Street, prior to the time you made arrangements to go to 819 Fifteenth Street?

Answer. He never had the building then.

Question. Then you did not testify to that awhile ago?

Answer. If I testified to it, I meant to testify, which I think my testimony will bear out the facts, that he had signs on the building, "For Rent." I knew, and Mr. Derrick knew, that that particular floor would be for rent, and intended to rent them out, as offices—he intended to rent them, but he could not rent them
167 out as rooms, and he never had any tenant in the building up to all the time I was there. When he was talking about leasing this building, wanting this building, the main thing was if he could rent these rooms, he would take them. It was too big for him. He only wanted the first floor. That is when I says, "I will take the second floor and rent it if you will fix the rent on it." Then, we dickered around about the rent. I was the one that said I would give him so much for the rent, and he accepted that to get his rooms rented.

Question. You made an offer, then, to Mr. Derrick, to take some of these rooms at a specified rental?

Answer. Yes, sir.

Question. And it was an offer just the same as you offer to rent any other place, and was not a discussion as to whether it would be best to come up there and go together and have the business under one roof to minimize the expenses?

Answer. Well, after we talked the thing over, we figured it was the best, because I could get the stenographer at those wages. I am in the neighborhood—it was a much better neighborhood than on Eleventh Street—it was very favorable to me, all around.

Question. You said that there were a lot of samples of shades on the first floor in the main store of Mr. Derrick's paper hanging business. What did these samples consist of?

Answer. Sample books.

Question. How were they arranged? Were they small or large sample books?

Answer. About this thick [indicating] and this big [indicating].

Question. You did not have any of those made up on rolls of different sizes and colors, etc., on little easels, like?

Answer. I did not.

Question. You had no ready or made-up shades on exhibition on that floor at all?

Answer. I did not.

Question. Did you have any upstairs?

Answer. Well, now, Mr. Ahalt——

Question. I mean on exhibition?

Answer. Mr. Ahalt, I would call an exhibition—you understand, of shades is a lace-insertion shade made up where there is an occasion for us to put lace insertion on a window on the first floor—there was a bay window came out like this [indicating]. In the back of this bay window there was a space to put two lace-insertion shades. I made up two lace-insertion shades for exhibition of my work of making a lace-insertion shade. We specialize in that work. Now, on the second floor I had on my three windows up there what they call a colonial-lace shade; that is, a scalloped shade. I use that.

Question. That answers the question sufficiently. Now, was there on the bay-window glass or other parts of the first floor, exterior of the first floor, and that portion occupied by Mr. Derrick's paper hanging business any signs, "The Shade Shop," "Window Shades," or any of a similar character?

Answer. On the first floor, on the windows, there was not.

Question. How about the exterior of the first floor anywhere about the building?

168 Answer. There was not on the first floor; none.

Question. What signs, if any, were on the first floor or thereabouts which would indicate to prospective customers where to go to make their purchases?

Answer. I was not supposed to be on the first floor.

Question. Just answer the question.

Answer. "The Shade Shop" was on the second floor. There was no signs on the first floor. I had nothing to do with the first floor. That was Mr. Derrick's place of business. There was no signs, "Window Shades, Shade Shop," at all on the first floor, on the glass, on the door, or nothing.

Question. You are positive of that fact?

Answer. I am positive of it.

Question. The only signs, then, appearing with reference to the "Window Shades," or "The Shade Shop," were——

Answer. In my place of business.

Question. On the second floor?

Answer. On the second floor, my place of business.

Question. You referred in your testimony and direct examination to the pay roll having been made up and obtained from Mrs. Scott.

What course did you pursue when it came to the matter of figuring an arrangement for payments on your pay roll? What would you do?

Answer. I knew how much my pay roll was. I employed the men. They were my own men. Do you want me to tell you how many?

Question. No; go ahead.

Answer. I had two men working. I paid them $20 a week, that is, $40. I would go downstairs and draw from Mrs. Scott $40 for the pay roll.

Question. Would that be in cash?

Answer. Always in cash, yes, sir.

Question. Of course, that would include your drawing account?

Answer. $40, I would not include my pay roll.

Question. I mean the payroll.

Answer. Yes, mine, too.

Question. Would she take any receipt of any kind from you?

Answer. Never.

Question. She did not take any receipt from your employees?

Answer. Never.

Question. In your business, from the workshop upstairs, while at 819 Fifteenth Street, who takes orders for shades?

Answer. Mr. Horigan.

Question. He would get them?

Answer. Any way, shape, or form they came in.

Question. How did they usually come in?

Answer. Telephone messages; personal mail. All mail was delivered to me.

Question. At 819 Fifteenth Street?

Answer. All mail was given to me, 819 Fifteenth Street.

Question. Who received it after it came?

Answer. It was left on the first floor at the bannister. The mailman would leave it on the bannister.

169 Question. How about the telephone orders? Who would receive those?

Answer. You understand there was a switchboard on the first floor and the telephone calls would come in, and they would ask for "The Shade Shop," and Mrs. Scott would ring them upstairs.

Question. She would ring them upstairs?

Answer. Yes, sir.

Question. Did she ever send word upstairs to come down and get orders or anything of that kind?

Answer. Yes, sir.

Question. In your absence who would get those orders?

Answer. Mr. Horigan.

Question. What portion of your time could you approximate as being spent actually in the building there, and outside? Was it about equally divided?

Answer. 75 per cent in the building.

Question. In the building?

Answer. 80 per cent in the building, I should say. I was mostly in the building.

Question. Would you say, then, that 20 per cent of the orders were taken by Mr. Horigan?

Answer. Well, I should say Mr. Horigan was on the outside, too. Mrs. Scott would take a lot of orders. Lots of times, Mr. Ahalt, there was nobody upstairs at all.

Question. As a matter of fact, Mrs. Scott would often take orders if you were upstairs. If somebody called up and said they wanted to place an order to come up and measure for the shades, she would take the order and write out a memorandum and turn it over to you?

Answer. Never. Never handled "The Shade Shop" business. If anybody would come in, certainly, the lady would take the order—she would not let them go out of the door without giving them something.

Question. Who made up these bills to send out for this work?

Answer. Mrs. Scott.

Question. Who received the checks in payment?

Answer. Mrs. Scott. I say Mrs. Scott. I did the majority of the collecting myself, you see. When we started all our business was builder work, speculative builders' work, and real estate work, and I had to go personally and get those checks. They would hardly ever send checks. They were always so far behind.

Question. When you would make collection, you would turn them over to Mrs. Scott?

Answer. All the time?

Question. Yes.

Answer. Yes.

Question. Mr. Sammons, I show you Commission's Exhibit 14, and I ask you whether or not that is the billhead that you use, or was used while The Shade Shop's business was being conducted at 819 Fifteenth Street?

Answer. Yes, sir.

Question. Have any material changes ever been made in that billhead?

170 Answer. It is the same bill that I have always used, except the address, Mr. Ahalt. Yes, it is the same thing; the same color. One time there was a different color, but of course, I could not control that.

Question. While you were at 733 Twelfth Street—I show you Commission's Exhibit No. 56, and ask you whether that is the billhead that you used while you were at 733 Twelfth Street?

Answer. It is.

Question. No material changes were made in that while on Twelfth Street?

Answer. It is.

Question. I say, there were no material changes made while——

Answer. It is.

Question. You mean that there were no material changes made?

Answer. The 819 Fifteenth Street.

Question. I say, while you were at 733 Twelfth Street?

Answer. No, not while at 733 Twelfth Street. It is the same as always; 733 Twelfth Street.

Question. There was not any arrangement made with the bank at the time the business was conducted at 819 Fifteenth Street, whereby you could check on that account, was there, Mr. Sammons?

Answer. No, sir; not on Mr. Luther L. Derrick's account.

Question. When you left 819 Fifteenth Street, you did not take any stock of material with you, did you?

Answer. I never carried any up there, Mr. Ahalt.

Question. Answer the question.

Answer. No, sir; I did not. I was not entitled to any stuff. It was not my stuff.

Question. Now, state as near as possible just what conversation took place between you and Mr. Derrick about the use, or the future use of the words or trade name, "The Shade Shop" when you left Mr. Derrick, or was about to.

Answer. Mr. Ahalt, there was only one thing said that brought the conversation up. I told Mr. Derrick I was going to go to Twelfth and H Streets and move my business there. He says, "I am going to keep those signs on the front of the building." I said, "What do you mean, 'The Shade Shop'? He says, "No, not 'The Shade Shop,' but I will rub the 'The' off and put, 'Derrick' up there." Then I says to him, "Of course, the name 'The Shade Shop' is my own business," and I distinctly said that, as I say to-day, that "The Shade Shop" is my bread and butter; the name of the firm, style and name of the firm, "The Shade Shop."

Question. What did Mr. Derrick have to say?

Answer. It was perfectly satisfactory. He did not have anything else to say.

Question. He did not interpose the slightest objection to your——

Answer. Never did. All the stationery—I took my own stationery with "The Shade Shop" on it.

Question. Was there any lengthy discussion about the future use of the words, "The Shade Shop?"

Answer. There was not five minutes' discussion. It was perfectly satisfactory. He and I left the best of friends.

Question. You say you had this conversation about the signs when you told him that you were going to Twelfth and H Streets?

171 Answer. Yes, sir.

Question. That was about May, 1914?

Answer. It was not.

Question. When did you move into Twelfth and H streets?

Answer. On April 15. I started about April—Mr. Waggenhoust gave us about two weeks to get in there. I left Mr. Derrick about the first of April. I notified him when we split the dividends, whatever was coming. The first of the year is when I told him. I wanted to give him plenty of time for me to break this man in business that he had working in his business, because I knew Mr. Derrick was still engaged in the business of manufacturing window shades. This man was a green man.

Question. When did this conversation about your notice to Mr. Derrick that you were going to leave, take place?

Answer. About the first part of January.

Question. You did not have Twelfth and H Streets in view at that time, did you?

Answer. I did not.

Question. And you continued then, between the 1st day of January, when you notified Mr. Derrick, January, 1918, when you notified Mr. Derrick that you were going to leave—you continued to conduct the business at 819 Fifteenth Street until you actually left?

Answer. Until the day I left; yes, sir.

Question. Which was about the fifteenth of April.

Answer. No; it was about the first of April.

Question. About the first of April?

Answer. Yes, sir.

Question. Now, Mr. Sammons, while you were located and conducting the shade business at 724 Eleventh Street, Hooper & Klesner's place of business was then about opposite on Eleventh Street in the basement and did they, or did you, have any knowledge of their taking any orders for shades to be made up and hung for their customers?

Answer. I did not have any knowledge of their taking orders. I was not there when they took orders, but they gave me orders to do work for their customers.

Question. Which required the measurement and fitting and hanging of shades. The same character of business that you conduct under the name, "The Shade Shop?"

Answer. Yes, sir.

Question. Do you recall whether you sought their trade in that particular, or that they sought you out?

Answer. They sought me out, sir—I could not state that, Mr. Ahalt. I am after work all the time.

Question. Did they have very much business along that line, or not?

Answer. A very little bit of business.

Question. A very little bit?

Answer. Yes, sir.

Question. Do you know whether or not you were getting all of their business in that particular?

Answer. No; I do not. I do not think I was getting all of their business, sir.

172 Question. What would you say that their business would amount to, roughly?

Answer. $15 or $20 a month.

Question. That would mean approximately how many orders?

Answer. I let the bills run for about three months, and they would run about $45 or $50. Occasionally, they had an order, one order, running for $75.

Question. Where were these shades furnished, principally—you would hang them for them, would you?

Answer. Yes; I would hang them—my men would.

Question. Where were these shades placed? Were they in apartment houses or private dwellings?

Answer. Principally apartment houses.

Question. Did they have very many apartment-house customers, or owners of apartment houses who were their customers?

Answer. I only remember one, that was Sansbury Co.

Question. I am speaking of apartment houses.

Answer. I guess they had about four or five.

Question. Sansbury Company, then, would place orders for apartment houses and dwellings with Hooper & Klesner, and they, in turn, would turn the orders over to you, and you would execute the orders and bill them?

Answer. Yes, sir.

Question. And they would pay you?

Answer. Yes, sir.

Question. These customers, as far as you know, of Hooper & Klesner's, for whom they were having you make up shades, were not informed that you were making the shades and not Hooper & Klesner?

Answer. We never informed them. I do not know whether Hooper & Klesner did or not.

Question. So far as the customers of Hooper & Klesner understood, or believed, Hooper & Klesner were making these shades up?

Answer. Mr. Ahalt, I did the work of 90 per cent of the wall paper men in Washington.

Question. Even in such instances, as far as the customer knows——

Answer. Does not know me at all.

Question (continuing). That wall paper hanger or paperer, or painter, or whomever places the orders with you, puts the shades up?

Answer. Yes.

Question. They do not know you as an individual in the matter at all?

Answer. No.

Question. Now, did you call the attention of Hooper & Klesner to the fact that this building at Twelfth and H Streets was for rent and that it might be obtained?

Answer. I did, sir.

Question. Did you suggest the arrangement of dividing the floor space and operating a business there, both of theirs and yours?

Answer. I did, sir.

Question. And you entered into an agreement for a lease with Hooper & Klesner, I believe, did you not?

Answer. Yes, sir.

173 Question. And they, in turn, were required to enter into a lease with the agent, Mr. Waggenhoust, or somebody?

Answer. Yes.

Question. You had made an effort, I believe, to lease this storeroom yourself, but were unsuccessful?

Answer. I did, sir.

Question. You explained that to Hooper & Klesner at the time?

Answer. I did.

Question. And you suggested to them that they go to Mr. Waggenhoust to lease the place, and that you would reimburse them for half of the rent?

Answer. Yes.

Mr. AHALT. I would like to have this marked "Respondent's Exhibit 6" for identification.

(The paper referred to was thereupon marked for identification, "Respondent's Exhibit No. 6, Witness Sammons.")

Question (by Mr. AHALT). Mr. Sammons, I show you a paper which has been marked for identification as "Respondent's Exhibit No. 6," and ask you to state briefly what that is.

Answer. That is a lease that I signed with Hooper & Klesner.

Question. For a part of the store at Twelfth and H Streets?

Answer. Everything it says in there. That is in the record. Everything; half the telephone service, and such things as that.

Mr. AHALT. I offer this paper in evidence as Respondent's Exhibit No. 6.

(The paper so offered and identified as "Respondent's Exhibit No. 6, Witness Sammons," was received in evidence, and the same is forwarded herewith.)

Question (by Mr. AHALT). Now, Mr. Sammons, when you and Hooper & Klesner were negotiating for this Twelfth and H Streets store, and discussing the terms upon which you would divide the expenses, and so forth; what arrangement, if any, was made as to the advertising or signs that would be placed upon the premises in connection with the business to be conducted there?

Answer. The arrangements was that I was to have my caption on the plate-glass window; all the plate-glass windows, and they were to put their signs above the window; that is, on the roof of the bay window.

Question. Mr. Sammons, I show you Respondent's Exhibit No. 1, and ask you to state whether or not those signs appearing on or above the plate-glass windows, proper, on the right of the picture, "Wall Papers," and on the left of the picture, "Painters," and in the center, and over the door, "Hooper & Klesner," were those

signs which were originally placed on the building when you went into it?

Answer. They were.

Question. And the border signs that appear there, I believe, are in substance, the signs that were there, with the exception of the fact that on this photograph it reads "Shade Shop" in some of the panels where the original read, "The Shade Shop"?

Answer. Absolutely.

Question. With the addition of the words "Shade Shop" as they appear on this photograph, were they all the signs, or
174 advertising matter that you had on the storeroom windows, or elsewhere, advertising your business?

Answer. That is all I had, and nothing else.

Question. Did your name appear anywhere on the windows?

Answer. No place.

Question. Nowhere on the building?

Answer. No place at all.

Question. Was there any advertising matter on the building which indicated to the public that there were two separate and distinct firms doing business on those premises?

Answer. There was only "The Shade Shop," "Window Shades," on the plate-glass windows and "Hooper & Klesner, Painters and Wall Papers," above the window. There was no other signs, W. Stokes Sammons—no other firm's name, or nothing on the building at all.

Question. When a customer came in the store under this arrangement that you had under this lease, who would answer the call of the customer, if they were looking for or wanted to purchase shades?

Answer. I should say about—you see, the people always came to the main entrance.

Question. Just interrupting you there. When you refer to the "main entrance," you mean the entrance immediately on the corner?

Answer. Yes. Of course, my factory was in the rear, back of a partition. My men were all there. Of course, either Mr. Hooper or Mr. Klesner or Miss Williamson, were always in front, and they would be the first ones to interview them, and they would call us if they wanted window shades.

Question. If you were not there, what would Miss Williamson or Mr. Hooper or Mr. Klesner do?

Answer. They would take our orders.

Question. They would record the orders, and when you returned they would turn them over to you?

Answer. Yes, sir.

Question. Was it you understanding and arrangement——

Answer. I paid them for that service.

Question. I understand. Was it your understanding and arrangement that all the shade business, or orders for making up of shades

which Hooper & Klesner might obtain from their customers, were to be turned over to you to be executed?

Answer. No, sir; it was not.

Question. You did continue to do business for Hooper & Klesner in filling orders that they would obtain from their customers the same as you had on Eleventh Street, and other locations?

Answer. Yes, sir.

Question. Were any instructions given by you to Miss Williamson, the employee, to inform customers who called at the store for the purpose of having shades made, that there were two separate, distinct businesses being conducted there, and that this was the work of "The Shade Shop"? I refer to a time prior to the filling of the order.

Answer. Yes, sir; Miss Williamson or Mr. Klesner or Mr. Hooper or myself—the first one called to the telephone, they would say, "This is Hooper & Klesner," and "The Shade Shop."

175 Question. Suppose a customer came in and you were out, and Miss Williamson was to take the order, as you have testified; was she instructed by you to inform that customer that this order was being placed with "The Shade Shop," which was a separate and distinct concern, doing business in that store?

Answer. These—I can not say as she did. I never had any record of that, but I am almost positive that she did.

Question. I am speaking of whether you had instructed her to do that.

Answer. That was the instructions—that it was Hooper & Klesner.

Question. How is that?

Answer. That was the instructions because the telephone service was under two names under the same number, and when the telephone would ring, they would say, "This is Hooper & Klesner's," and "The Shade Shop," and the people coming in, or over the telephone.

Question. People coming into the store, or calling, had you given Miss Williamson any instructions to inform that customer that the order was being placed with some one whose name did not appear on that building on the outside, or specifically, that it was being placed with The Shade Shop?

Answer. There never was any controversy—no argument ever come up. They never did try to take one shade order on the place. Every shade order that would come into the place I got. Mr. Hooper or Mr. Klesner, they never tried to say, "This is my order," or "Mr. Klesner's." They never did that once since I was there.

Question. Then, all business which we might term transient business, or business that came in off the street, not being your old customers, or Mr. Klesner's old customers, were turned over to you, and you got that business?

Answer. Whether they were my old customers, Mr. Ahalt—I advertised for customers, and my customers would send trade, and

that trade is what you say is transient trade, too. You can combine that with transient trade.

Question. I refer to customers that were not your old customers, or parties who were sent by your old customers.

Answer. They would always turn every order over to me.

Question. When you were taking an order from a customer, who came into the place, and was called to this customer by some of the other employes there, would you inform that customer, assuming that it was not an old customer, that this was a separate and distinct business, and that it was not Hooper & Klesner's business?

Answer. No, sir.

Question. Then the public had no way of determining from the signs that were placed on this building, or the treatment they would be accorded when they came into the place, of knowing whether or not they were placing an order with Hooper & Klesner or with The Shade Shop, until after they had been specifically informed or had received a bill for the shades?

Mr. HAWKINS. I object to that as calling for an opinion on the part of the witness and being an ultimate fact that will have to be decided by the commission. He can not express that.

176 Examiner DUNHAM. You may now answer the question. The objection is in.

The WITNESS. I could not answer that question, Mr. Ahalt, because I never asked anybody did they know they were dealing with me. I took it for granted that they knew they were dealing with The Shade Shop for window shades. It is very unfortunate thing that there were two people in the building like that, together, but the names on the windows, "The Shade Shop, Window Shades,"—my advertisement was, "The Shade Shop, Exclusive Manufacturers of Window Shades," and people, my customers, knew I was an individual firm and not connected with Hooper & Klesner.

Question (by Mr. AHALT). I am speaking of the public.

Answer. I could not answer as to the public.

Question. You say it was unfortunate, Mr. Sammons. What do you mean when you say that it was unfortunate for two people to be in the same building together, conducting separate businesses?

Answer. In any line—the jewelry business, and an optical man. If an optical man is an optician and he is subleasing a place from a man, a jeweler, I think it is bad policy for the two people to be in one store; to rent together under one lease.

Question. Do you contribute some of the confusion to the fact that the two of you were occupying the same storeroom?

Answer. Never.

Question. What do you mean when you say it is an unfortunate instance? Do you mean unfortunate as to what the result would be from your being located there together?

Answer. I did not mean exactly—I never had any confusion—not once did we have an argument—I have turned lots of wall-paper work over to them, and even solicited business for them. Customers

have come in, and I would ask them if they needed anything in the line of wall paper and say these were good people, and they would do the same things toward me.

Question. What would be the result of this unfortunate arrangement of which you speak?

Answer. I do not say together here—I am talking about any two people.

Question. Would the result be a confusion in the minds of the people?

Answer. No; no. I am talking about the eventual—they are going to split up eventually. Partners—75 per cent of the partners split up. Seventy-five per cent of the people that rent a place together split up. There are going to be arguments, and that is the unfortunate thing about it, and you are going to have trouble. You had better be by yourself, and you will have no trouble.

Question. You spoke in your testimony of using the 741 entrance, principally as a tradesmen's entrance. You received very few customer's through that entrance, did you?

Answer. Very few; only except personal customers.

Question. That is at the end of one side of the store, and immediately there you had your work bench for your extra customers?

Answer. I did that mostly, Mr. Ahalt, to keep from bothering those people up in front. If anybody came in that I knew, that I had worked for, that I did work for, I would tell them
177 to come in this entrance, and that would keep from bothering the people in the front.

Question. When you testified in your direct examination that Hooper & Klesner were only in the business of wall papers and painters you did not mean to convey the meaning that they were not then and had engaged prior to that time in the taking of orders and execution of orders for making up of window shades, did you?

Answer. I have never known them to manufacture window shades in my life.

Question. My question referred to the taking of orders and execution of orders for making up of shades. They were engaged in that business prior to the time that you went there, were they not?

Answer. They never had it on their windows or never had it on their letterheads or billheads. They always told that they did it as an accommodation. Their line was the paper hanging and the painters and wall paper, and I testified that this is their line of business and they were not in the window-shade business. When a man gives an order for painting and paper and window shades and such, 90 per cent of the time it is given to one man, and he takes the contract. They all do it together. That is the way they do and that is the reason why they turn over the work for window shades, as they would not have the machinery and such as that.

Question. They were doing that, doing that class of business, were they not?

Answer. I have seen them sell automobiles, houses, motor cycles, and anything.

Question. You were manufacturing shades and hanging them for them on their orders, were you not?

Answer. Absolutely; I testified to that.

Question. You do not mean to testify that they were not doing that class of business, do you?

Answer. I testified that their work did not amount to but $15 or $20 a week—a month, I mean. I have seen their billheads, their place of business—I have seen the sample window shades. I have never seen them advertising their window shades, so I could not testify that they did sell window shades——

Question. What kind of notice did you give Hooper & Klesner when you made up your mind to leave Twelfth and H Streets?

Answer. I broke my lease.

Question. Did you pay them any rent for their premises, after you left the premises?

Answer. I did not, sir.

Question. That lease had a year or so to run, did it not?

Answer. Yes, sir.

Question. You knew that at the time you left?

Answer. Yes, sir.

Question. What kind of a notice did you give them? You referred to having notified them in the direct testimony. What kind of a notice did you give them?

Mr. HAWKINS. Wait a minute. I am going to object to that. I do not think it is at all competent or material to the issues in this case to try out the question of breaching that lease. He said he
178 had breached his lease, and so far as we are concerned, I think that is sufficient.

Mr. AHALT. I am asking now as to what form of notice he gave, and what he referred to as a notice in his direct testimony when he said that he notified them about three months before. I am asking what he meant by the notice that he gave them.

Mr. HAWKINS. Do you consider that it is material to go into that and try that out in this case? I do not. I do not believe that is at all material, the quarrel about the lease, and if you will show me in some way, as a lawyer, how it is, I have no objection to your putting it in.

Mr. AHALT. I think I will follow it up.

Mr. HAWKINS. All right, I will withdraw the objection then.

The WITNESS. What was that question, Mr. Ahalt?

Question (by Mr. AHALT). I asked you what form of notice you gave, to which you referred in your direct testimony, and referred to as having given three months notice before you left Twelfth and H Streets.

Answer. Three months; where do you get three months from. There was never any testimony that I gave three months notice.

Question. Now, I do not want to interrupt you, but you go rambling around all the time——

Answer. You asked me; don't you want me to answer the question?

Mr. HAWKINS. If you want an answer to that, we ought to go into it fully.

Mr. AHALT. I just asked you, Mr. Sammons, what form of notice and I think that question can be very readily answered.

Examiner DUNHAM. The question was, as asked, what was the form of notice that you gave that you were going to vacate?

The WITNESS. I said, verbal.

Question (by Mr. AHALT). To whom did you give this verbal notice?

Answer. I could not say whether Mr. Klesner or Mr. Hooper.

Question. What did they have to say about it?

Answer. They were tickled to death. That is what I wanted to go into. They were tickled to death.

Question. They were tickled to death. I believe you testified that they entered no objection to your vacating the premises, on your direct examination, is that correct?

Answer. Mr. Ahalt, they never made no objection; never made no objections, either writing or personal, for any rent, or to fulfill my balance of the lease.

Question. Now, the day you moved your things out of Twelfth and H Streets, Sunday morning, you made an effort at that time, and did erase on that very day, the signs from the windows, did you not?

Answer. I did; yes, sir.

Question. Did you anticipate any trouble about that?

Answer. Never did.

Question. Why were you so anxious to get it off that particular day?

Answer. Mr. Ahalt, my rent was up on Monday, and I had the men there part of the day. We had successfully moved everything out by noon time. I had two men Mr. Mann and Mr. Seitz
179 rigging the table up in my new place, and Mr. Horigan, and I, having nothing to do, I did not want to do it the following day, which was Monday, and I knew I would be busy enough, and I wanted all the work done that I could do—we can not work our men on Sundays, only outside. That was one of the accomplishments I did.

Question. Your relations with Hooper & Klesner had been pleasant up to that time, had they not?

Answer. Yes, sir.

Question. You did not anticipate any trouble about getting these signs off the window?

Answer. Mr. Klesner came down that morning, and for the entire time he was talking and laughing with all of us, until the gun up there.

Question. Why were you so persistent after you had a few words about it, in getting them off that particular day?

Answer. Because I knew I could not get back when he was there. That was the only opportunity I had to get them off. If a man would deliberately pull a gun on me, I knew he would do something else after that.

Question. Mr. Sammons, you said that after this gun was drawn and you left the building, that you returned and broke into this place, the door at 741 Twelfth Street, for the purpose of getting clothes.

Mr. HAWKINS. I enter an objection to his answering the question because there is no evidence that he broke into the building when he came back.

Question (by Mr. AHALT). You stated, Mr. Sammons, in your direct examination, that the door was barricaded, did you not?

Answer. I did.

Question. And that it required shaking of the door after unlocking it in order to gain an entrance?

Answer. I did, Mr. Ahalt. All my rent was paid up to Monday night. I had a right to a possession of the place. My rent was paid in full. It did not make any difference if that door was barricaded. I had the place of business.

Mr. AHALT. That is a question of law——

Mr. HAWKINS. He has got a right to explain, if you are going to try to put it into the record.

Mr. AHALT. That is a question of law as to whether he had a right to break in.

The WITNESS. I did not break in. I explained to you right here, that there was a stick up against the door and I shook that two or three times, and the stick deliberately fell out, and the door opened, and I walked in.

Question (by Mr. AHALT). You showed that that stick was not nailed in any way?

Answer. Absolutely was not nailed, at all.

Question. Did you examine the door to see if it was nailed or not?

Answer. No, sir.

Question. You do not know whether it was nailed or not?

Answer. No, sir; I did not.

Question. As a matter of fact, did not you testify that you left your coats, that you had left in the storeroom, in a little alcove, or something there, while the policeman was there on the first occasion, and before you entered the second time for the purpose of taking these signs off?

Answer. I told you, Mr. Ahalt, I, myself, I did, to this extent. I did not do the heavy, dirty work. I just took my coat off and hung it up. I was in my shirt sleeves, when I ran to the telephone for the police I was in my shirt sleeves. I had my coat on when the policeman asked me to go down to the station house to make a

complaint against him. I took my coat off the hook, and Mr. Horigan had changed his clothes to do all the dirty work, and he still had his old clothes on, and his Sunday clothes were in the closet, locked up.

Question. Did Mr. Horigan go down to the station house?

Answer. He did.

Question. In his old clothes?

Answer. He did.

Question. When you first, or Mr. Horigan first made the effort to have these signs taken off, to erase the sign from the windows, "The Shade Shop," did Mr. Klesner say anything to you about his taking them off?

Answer. No, sir.

Question. You are positive of that?

Answer. I am positive of it.

Question. Did he say he did not want the windows all messed up?

Answer. Did not say a word to me, sir—Oh, when we got there to take them off, you understand, he said that we were messing those windows and we said, "We are going to be careful with them." That was all in one second. He did not make that remark when he had his gun out. I asked him the reason why and he said, "Get out," like that. How can you take the signs off the window, if you do not mess them up—he would have messed them up if he had taken them off. It is as broad as it is long.

Question. You are positive that he said nothing about taking them off?

Answer. Previously, never said a word.

Question. Before you took them off, at any time, did he say he would take them off?

Answer. Well, Mr. Ahalt, when I got up on the window—he was very fast and quick, and he said we were messing his windows up, dirtying his windows, and we said we were going to be as careful as we could, and then he said, "You must not take the signs off."

Question. This all happened rather quickly, you say?

Answer. All very quickly.

Question. He might have said he would take them off, then, and you might not have heard it?

Answer. He did not say he would take them off. He said we would mess them up ourselves.

Question. Did you, in any of your advertising matter pertaining to your trade name, in which you contend for, "The Shade Shop," have that word quoted, or those words quoted, or in any way emphasized, so as to include the word, or attach any significance to the word "the," or did you just use the plain words, "The Shade
181 Shop," such as appeared on this window, and such as have appeared on the exhibits that you have here?

Answer. On the new building or the old building?

Question. On any of your stationery?

Answer. The same on everything.

Question. Then you never emphasized the word, "the" by quotation, or the trade name, "The Shade Shop," by quotations or otherwise?

Answer. All big letters, The Shade Shop.

Question. But not by way of quotation?

Answer. I never took and put on above—I never put parentheses on above or underlined it—is that what you mean?

Question. Well, emphasized it?

Answer. No, never did that.

Question. You also used in conjunction with the name "The Shade Shop," on these windows, the words "window shades"?

Answer. Yes, sir.

Question. Why did you do that, Mr. Sammons?

Answer. I brought that out more clearly, before, I thought, Mr. Ahalt.

Mr. HAWKINS. He has a right to cross-examine you.

The WITNESS. I put "window shades," up there to—no, I put samples of window shades, too. That was my business that I was engaged in.

Question (by Mr. AHALT). Why did you use both words if "The Shade Shop" would convey the same meaning?

Answer. I used "The Shade Shop," as the style of my business.

Question. And the "window shades" for what purposes?

Answer. The article I sold.

Question. The article that you sold?

Answer. And manufactured, of course.

Question. Do you contend that those names convey sufficient meanings to the public?

Answer. I do, sir.

Question. Do you consider that the words, "window shades," convey the same meaning to the public as the character of the business conducted as the words, "Shade Shop"?

Answer. I do not. I think "The Shade Shop," in my opinion, is a trade name, the same as I quoted the Corset Shop, or the Umbrella Shop, or the Violin Shop; it is a name of a business.

Question. It describes a kind of business that is being conducted, don't it?

Answer. No, sir; I did not say that, at all; no, sir.

Question. What business, then, does, "The Umbrella Shop," convey to your mind, that you have referred to?

Answer. The Umbrella Shop and the Corset Shop, are both in the same class, you understand. It is the style of that man's business. It is the same as a man's name, say, "Jones & Smith."

Question. What kind of business would you expect to be conducted in a place that had the sign, "Corset Shop?"

Answer. Corsets.

Question. Then it pertains to the class of business conducted on the premises?

182 Answer. The same as, "The Shade Shop." Mr. Wardman could put, "The Shade Shop," on his place, down there. He sells lamp shades. If you asked my opinion, that is my opinion. That is the reason I put, "window shades," next to mine. You take the Print Shop, Byron S. Adams. They do not style their name, "Byron S. Adams." They used it opposite the same as I do now, W. Stokes Sammons—they are trading under the name of "The Print Shop."

Question. Does Byron S. Adams trade under the name of "The Print Shop," or, "Byron S. Adams"?

Answer. They have, "Print Shop," and their advertisement in the Evening Star, "Byron S. Adams," also. I advertise, sometimes, "The Shade Shop, W. Stokes Samomns," I did that part of the time to try to get this confusion which has been going on—to try to get a little distinction so I could get some trade.

Question. Now, Mr. Sammons, Byron S. Adams advertise, as you have observed it, principally, Byron S. Adams Company?

Answer. Oh, no.

Question. Does he just use the words, "Print Shop?"

Answer. He has "Print Shop," in his advertisements. He has, "Print Shop," on his stationery and on his building.

Question. Does he use the words, "Print Shop," in connection with his name?

Answer. I could not say that. I know he has it on his building, "The Print Shop."

Question. He also has his name on the building, does he not?

Answer. Yes, sir; so have I got the name on my building.

Question. Print Shop indicates to your mind—the words "Print Shop," on Byron S. Adams' place of business, indicate what?

Answer. To my mind, that is his trade name.

Question. His trade name. You do not consider that, "Byron S. Adams," is the trade name?

Answer. I know Byron S. Adams does printing, and I know the Print Shop does printing, but you remember, he was trading under, Byron S. Adams, years and years before he took, "The Print Shop" up.

Question. Now, what signs did you state that you had on your automobile truck when you moved, or delivery car, when you moved to 733 Twelfth Street?

Answer. Which truck? I had two trucks.

Question. I think you referred to a Ford truck.

Answer. I had two big trucks. The first truck I bought was when I was at Twelfth and H Street. That was two months previous before 733 Twelfth Street.

Question. What did you have on that truck?

Answer. "The Shade Shop, Exclusive Manufacturers of Window Shades, W. Stokes Sammons, Proprietor"—W. Stokes Sammons—no "proprietor" just "W. Stokes Sammons," the same as I have on my truck to-day.

Question. What did you have on your letterheads or billheads, "W. Stokes Sammons, Proprietor"?

Answer. I did not have it until lately.

Question. You had it while at 733 Twelfth Street?

183 Answer. Just lately on the last year I put "W. Stokes Sammons, Proprietor," on there the last two years.

Question. Why did you add the word "proprietor" to "W. Stokes Sammons"?

Answer. Well, there has been a lot of people that come to me, a lot of people would see "The Shade Shop," and I have always said, "manager," you understand, and the only way I can do this is to put "Proprietor." That might help me out in getting some of the trade.

Question. You think then that the word "proprietor" added to your name would sufficiently identify you, or would identify you more with your business, "The Shade Shop," than just your name without the word "proprietor"?

Answer. I do not.

Question. What do you mean, then?

Answer. I mean that I had stationery out, "The Shade Shop." If another person had stationery with "Shade Shop" on it, they would not know which was which, and I says if I have this name on, why, they would know which is my shade shop.

Question. They could not get that same idea or information from just you name, without the word "proprietor"?

Answer. Not on the shade shop, they could not.

Question. You always, prior to the time, used the word "manager"?

Answer. Manager.

Question. How is that?

Answer. Always "Manager."

Question. Did you do that at 724 Eleventh Street?

Question. I show you commission's Exhibit No. 8 and ask you to indicate on that exhibit the words "W. Stokes Sammons, Manager."

Answer. No; it is not there.

Question. Then you were not using it in 1911?

Answer. No; I was not using it in 1911.

Question. What did you say while you were at 1222 H Street by way of manager or proprietor or your name in connection with the business on your letterheads and billheads?

Answer. I could not say.

Question. You do not know whether you used any name at all on any of your stationery prior to the time of your location at 724 Eleventh Street?

Answer. No, sir; I do not know.

Question. As a matter of fact, you did not use it?

Answer. I say here I did not, if this is all the stationery I had.

Question. Well, you have already testified on that.

Answer. See if you can not get a billhead there for me for a second—724 Eleventh Street billhead, no.

Question. You are now looking at commission's Exhibit No. 5, and you state that the name W. Stokes Sammons does not appear as manager or in any other capacity on that exhibit.

Answer. No; this is the style of the firm, "The Shade Shop."

Question. And that is the bill head you used while at 724 Eleventh Street?

184 Answer. Yes, sir.

Question. Mr. Sammons, when you went with Mr. Derrick to the premises at 819 Fifteenth Street you used the word "manager" on your stationery, did you not?

Answer. I did.

Question. Why did you use the word "manager"?

Answer. I could have used the word "proprietor" or left it just the same. I used it because I was manager; that is all.

Question. You were not proprietor, then?

Answer. I absolutely was.

Question. Why did not you put "proprietor" on?

Answer. I did not want to.

Question. Did you let Mr. Derrick make any suggestion about this word "manager" on there?

Answer. He did not.

Question. Did he make any objections to your using the word "proprietor"?

Answer. He did not.

Question. Did he make any suggestions as to what should be put on that letterhead?

Answer. I made the letterhead out myself, and gave it to the printer.

Question. Will you refer to commission's Exhibit No. 48, and state whether or not these bills which were rendered you were rendered in the name of "The Shade Shop," or "Shade Shop"?

Answer. They were rendered in the name of "Shade Shop."

Question. Referring to commission's Exhibit No. 49, can you state positively that you personally received that letter, and that it was received in the office of Mr. Derrick, and turned over to you subsequently?

Answer. I could not say whether I received it personally or whether it was given to me by somebody.

Question. Referring to commission's Exhibit No. 45, which appears to be a letterhead of Hooper & Klesner. Will you state whether or not that letterhead was used by Hooper & Klesner while in business at Twelfth and H Streets?

Answer. It is not.

Question. I believe you testified to this as being a letterhead which was used by them, and that it bears a photograph of the place at Twelfth and H Streets NW.

Answer. I testified that was a letterhead, a photograph of the letterhead—this "Manufacturers of Window Shades," was stationery they had printed after I left them. There is their proposition right there [indicating]. There is another one—this commission's Exhibit 46, at no time did their stationery have "Manufacturers of Window Shades," or "Window Shades" on their stationery during the time I was there.

Question. Where did you get this letterhead?

Answer. This letterhead, commission's Exhibit No. 45, was given to me by a real estate firm. I refuse to tell the name of the firm. This letterhead [indicating] was given to me by Mr. B. L. Linthicum. That is commission's Exhibit No. 46. Mr. Linthicum purchased some material.

Question. I asked you from whom you received this letterhead?

185 Answer. A real estate firm.

Question. What real estate firm?

Answer. I refuse to say that name.

Question. Why do you refuse to give the name?

Answer. Because it is a personal matter.

Question. Do you have any personal knowledge of the date that this real estate firm received this letter?

Answer. Yes, sir.

Question. What personal knowledge have you as to the fact the day you received that letterhead, that it is a letterhead used by them at the present time, or subsequent to the time that you vacated the premises?

Answer. This letterhead was given to them——

Question. I asked you what personal knowledge you had of the fact that it was——

Answer. I know it. The real estate firm has the balance of this letter; I think it was an estimate that was submitted for work done. They hold the balance of this letter. It was January or February of 1920.

Question. Then all you know about this letterhead is that some real estate firm whose name you refuse to disclose received this letterhead?

Answer. I can give the name—Weaver Bros. gave it. Commission's Exhibit No. 45 was given to me in either January or February or March of last year, and the estimate was written for work done at the apartment house at Eleventh and M Street.

Question. All you know about this letterhead, commission's Exhibit No. 45, is what Weaver Bros. told you when they turned this letterhead over to you. That is all you know about the receipt of it, or anything else connected with it?

Answer. Weaver Bros. showed me this Exhibit No. 45 in the form of a letter with their signature, and an estimate for work. I asked them to give me the top part of it. They had to keep it for a record there, and they did give me the top part.

Question. They told you they received that through the mail, or otherwise?

Answer. They did.

Mr. AHALT. I move to strike out all the witness's testimony as to the above in direct examination and on cross-examination, as the same pertains to commission's Exhibit No. 45, as being introduced and testified to strictly on hearsay evidence.

Mr. HAWKINS. I object to the striking out of his testimony on direct examination for the reason that at the time he merely identified commission's Exhibits Nos. 45 and 46, and they speak for themselves. As to striking out his testimony on cross-examination, which has just been given, as being hearsay, I object to that for the reason that Mr. Ahalt himself brought it out and asked for the hearsay testimony. All that I asked in direct examination with reference to these two Exhibits Nos. 45 and 46, was that they be identified, and I did not go into the question as to how he got them or what somebody said, because they speak for themselves.

Mr. AHALT. The record will speak for itself as to what the witness testified to on direct examination as to these respective exhibits.

186 Mr. HAWKINS. Before the motion is passed upon, I would like to ask permission to examine the witness here a little further about commission's Exhibit No. 45. That would be material as to the question of whether it should be stricken out.

(Discussion off the record.)

Question (by Mr. HAWKINS). Commission's Exhibit No. 45, I understood you to say is a letterhead taken from a letter that was shown to you by Weaver Bros.; is that correct?

Answer. Yes, sir.

Question. Did you see the letter?

Answer. I did.

Question. Did you clip commission's Exhibit No. 45 from that letter?

Answer. I did not. A man—one of the firm—did it for me.

Question. Were you there when it was done?

Answer. I was.

Question. So you saw that?

Answer. I saw it.

Mr. AHALT. He testified to that.

Mr. HAWKINS. Then I submit that it is competent. He saw the letter and it was given to him, and so far as what he said now as to what Weaver Bros. said, of course, Mr. Ahalt asked what they said about it.

Mr. AHALT. My objection to the testimony of the witness as the same pertains to commission's Exhibit No. 45 is that he has not

personal knowledge of the fact that this letter was sent to Weaver Bros. by the respondents or received by Weaver Bros. and that the basis of his whole testimony is hearsay—what they hold him.

Mr. HAWKINS. I submit that he has testified that he saw the letter and saw the signature.

Mr. AHALT. I do not dispute that.

Mr. HAWKINS. He saw the signature of Hooper & Klesner to it, and he asked for the letterhead, and they gave it to him.

(Discussion off the record.)

Examiner DUNHAM. We will adjourn until 2.15 o'clock.

(Thereupon, at 12.55 o'clock p. m., a recess was taken until 2.15 o'clock p. m.)

AFTER RECESS

The hearing was resumed at 2.15 o'clock p. m., pursuant to the taking of recess.

W. STOKES SAMMONS, the witness on the stand at the time of the taking of the recess, resumed the stand and testified further, as follows:

Cross-examination (continued) by Mr. AHALT:

Question. Mr. Sammons, when you left 819 Fifteenth Street, all bills receivable at that time were collected, or were turned over to Mr. Derrick, and if collected, were collected by him, were they not?

Answer. Let me hear that again.

(Thereupon, the reporter read the pending question.)

The WITNESS. Yes, sir.

187 Question (by Mr. AHALT). How did you handle Mr. Derrick's orders for shades while you were at 819 Fifteenth Street, from his old customers. Did you bill Mr. Derrick for them, or did you bill——

Answer. Charged them to Derrick—Luther L. Derrick.

Question. That was even so when Mr. Derrick was banking the proceeds of the business that you were managing under the name of "The Shade Shop?"

Answer. Yes, sir.

Question. And he, in turn, billed his old customers?

Answer. Yes, sir.

Question. You do not contend, Mr. Sammons, that the firm of Hooper & Klesner, respondents here, used the words "The Shade Shope," or the words, "Shade Shop," on any of their stationery or advertising matter, do you?

Answer. Not on any of their stationery. I have seen "The Shade Shop," or "Shade Shop," on their stationery.

Question. Have you ever seen any newspaper advertising or any advertising matter put out by them which carried on it the words, "Shade Shops," or "The Shade Shop?"

Answer. I have never seen Hooper & Klesner advertise anything in any of the papers, their business, or this business.

Question. Their business is principally that of paper hanging, decorating, wall papering, and such as that?

Answer. Yes, sir.

Question. And this shade shop business is merely incidental to their main line of business?

Answer. I could not answer that. I do not know.

Question. Well, it is not their principal occupation, is it?

Answer. No; it was not when I was with them.

Question. Then, if their principal occupation is that of paper hanging, paper, and so forth, their shade business would be incidental to their other business, would it not, or just a part of this business that they conduct?

Answer. Sure, it is a part of their business.

Question. What did your business amount to, Mr. Sammons, we will say, for the years you were with Hooper & Klesner at Twelfth and H streets, if you can approximate it?

Answer. About $15,000 or $20,000.

Question. Gross?

Answer. Gross, when I went—when I first went up there. It went up, in the last year, to something like $75,000.

Question. The last year you were with Hooper & Klesner?

Answer. I would not say—I would say $60,000.

Question. You are now referring to the——

Answer. Last year that I was with Hooper & Klesner.

Question. That would be practically the calendar year of 1915?

Answer. Yes, about—I left them—let use see—the first of November, didn't I?

Question. Yes; I think you——

Answer. The first of December. I figure the first month at my new address, 733 Twelfth Street, in this business, that I figure $60,000, that year, with Hooper & Klesner.

188 Question. What was your gross business; what did it amount to the first year, we will say, at 733 Twelfth Street?

Answer. It averaged between $60,000 and $75,000 every year.

Question. While at 733 Twelfth Street?

Answer. Yes, sir.

Question. What was your business for the last year, or dating from now back? What would it amount to, approximately?

Answer. Around about $75,000 to $80,000.

Question. Then it has not depreciated?

Answer. No, sir.

Question. Since leaving Hooper & Klesner?

Answer. No, sir.

Question. Have you any other occupation than that of manufacturing shades, Mr. Sammons?

Answer. No other occupation, at all.

Question. When you moved from Twelfth and H Streets, I believe you have already testified that 733 Twelfth Street is two actual

doors below the entrance to the Twelfth Street property—why did you select that particular location, Mr. Sammons?

Answer. At Twelfth and H Streets?

Question. No; 733 Twelfth Street.

Answer. 733 Twelfth Street?

Question. Yes.

Answer. That was about the only place available around there that I could get. They had a new building going up, and Mr. Fairfax made me a very good proposition.

Question. Do you consider any of the confusion that you have contended has existed as to your business and that conducted by respondent here has been due to the fact that you were so closely connected there in location?

Answer. Mr. Ahalt, about 60 per cent of my business is done over the telephone, and it is the telephone that is the most misleading thing in my business. About 60 per cent of my business is done over the telephone, so that would be the greater amount of business that I have lost through misleading names. Then, the other part is what the witnesses testified to.

Question. Do you consider that any part of this supposed confusion in the public minds as to "The Shade Shop" and Hooper & Klesner's "Shade Shop," is due to the fact that you were so closely located there to each other?

Mr. HAWKINS. I want to show my objection to this question.

The WITNESS. It was, to a considerable extent; yes, sir.

Question (by Mr. AHALT). Now, when you moved to 733 Twelfth Street, what business did you engage in there?

Answer. Exclusive manufacturer of window shades.

Question. At the same time that you occupied that building and were open for business, is it not a fact that a wall papering, painting, and decorating business was opened in the same storeroom occupied by you?

Answer. It is.

Question. Who conducted that business?

Answer. Mr. James C. Mann.

Question. In what capacity?

Answer. As proprietor and manager.

189 Question. As proprietor. Did you have any interest in that business?

Answer. I did.

Question. What was your interest in it?

Answer. He never had any—it was the same instance as the Derrick business. He never had any credit rating and could not do anything on credit, and I bought the materials for him, and he gave me a small fraction of the profit.

Question. What was that fraction of the profit?

Answer. 10 per cent for financing him.

Question. Did you have a written contract with him?

Answer. I did not.

Question. How did it come that you entered into any such arrangement with Mr. Mann, you never having been engaged in the paper hanging or papering and decorating business prior to that time?

Answer. Well, Mr. Ahalt, it was the wind-up of the busy season and Mr. Mann was an extra man, a helper who I had around there. I was to lay him off the first of the year. He has had a considerable lot of experience in the wall papering and painting business, having been in the business for himself previously. He asked me would I rent the front part of the place to him, and I was very glad to do it. It helped me out in my rent. Rent was a considerable lot of money for those days. I charged him $40 a month for the front place, including the entire cellar for his stock.

Question. Under what name was that business conducted?

Answer. The Decorative Shop.

Question. What advertising matter or signs were on that building in connection with that business?

Answer. On the main plate glass in gold, "The Decorative Shop."

Question. Is that all that was on the building?

Answer. That is all that was on the building, on the main plate glass—Wall Papers, Painting and Decorations.

Question. Did you have separate stationery for their business?

Answer. Absolutely, sir.

Question. You have not a sample of that, have you?

Answer. I can get a sample of it.

Question. Who made up the bills?

Answer. Mr. Mann did.

Question. For that branch of the work?

Answer. Mr. Mann did.

Question. Who collected the money?

Answer. Mr. Mann did.

Question. Who employed the help?

Answer. Mr. Mann.

Question. Mr. Mann had exclusive charge of the business?

Answer. He owned the business.

Question. He owned the business. What, Mr. Sammons, since you have used that expression in this testimony, as well as some previous testimony, that a person owns a business—what do you mean by "owning" a business?

Mr. HAWKINS. I object to the question.

190 Mr. AHALT. I am asking for his interpretation of the understanding of the word "owned" when he refers to it as such.

The WITNESS. I will give you my opinion of it, and I think it bears out very truthfully the name of the business. When Mr. Mann went in that business I advanced him money for his pay roll when he needed it. I went good for credit to the wholesale paper houses in Washington for his merchandise. After being in business some

time—I do not know what he did with his money, whether he spent the money or gambled with it, but whatever he did with it he was indebted to me for a sum of $600 or $700, and he could not pay me——

Question (by Mr. AHALT). I do not want to interrupt you, but you are getting away from the point.

Answer. The business only lasted for about six or seven months; possibly eight months.

Question. You are speaking of a period of six months following the time you opened the business?

Answer. That is all the time Mr. Mann was in that business. It came to a time when he had about $100 worth of wall paper in the place, and I come to a show-down. I demanded my money. He could not pay me anything. Now, I took a release from him of all his ladders, his stock, and the good name of the business for what he owed me.

Question. You bought him out, in other words?

Answer. Wait a minute. Before I did this I went around to the different men in the city of Washington that was in the wall-paper business, and I told them there was an opening down there for them if they wanted to come; that I would sell them—I told them what I had in the place; so many ladders, so many rolls of paper, and the good will of The Decorative Shop, which I considered Mr. Mann had advertised in the newspapers and had in several things spent a few dollars in advertising, and I sold that good will for $500 to Hinkle & Cohen.

Question. Now, if you will answer the question I asked you——

Answer. That answers your question.

Question. I asked you what you meant when you used the word "owned"?

Answer. Well, if a man—if I should start out to-morrow and run a store on Fourteenth Street as "The Shoe Place," and would advertise that place and get to be known, I would consider that I owned that place.

Question. Well, now, if you had some one associated with you in business as you were in this case with Mr. Mann, would you still say that Mr. Mann was the owner of that business?

Answer. Absolutely.

Question. Why, because he has a greater interest in it?

Answer. He had the interest in it.

Question. I thought you said you had 5 or 10 per cent interest in the profits?

Answer. I did not. I said I was getting 10 per cent of the profits for loaning him money.

Question. Did you have any security for your advances?

Answer. I did not.

191 Question. And you considered that he owned the business because he ran the business and because of the fact that he

owned all the interest in the business, with the exception of this 10 per cent of the profits that he was to give to you?

Answer. It applies the same way. When I went to buy stock in my place of business and I needed $5,000, and I went to the Merchants' Bank, and they made a loan of $5,000 at 6 per cent—I consider the Merchants' Bank did not own any interest in my business at all. I was paying them 6 per cent for the loan of the money. That was just the same with every bank that loaned me money. I was getting 10 per cent from Mr. Mann.

Question. You did not agree that you would give the Merchants' Bank a 10 per cent interest in your business when you borrowed money from them, did you?

Answer. No, sir.

Question. What, if anything, did you have to do in connection with the painting, paper hanging, and decorating work which might come to the store at 733 Twelfth Street?

Answer. At every opportunity I did it the same as I did when I was at Hooper & Klesner's. If anybody came into my place, I recommended Hooper & Klesner.

Question. If a customer came in there when you were in, about wall papers, would you show the wall papers, or anything?

Answer. I did not, and could not, because I did not know anything about the business.

Question. You are positive you never showed wall papers to any customers that came into that store while you were at 733 Twelfth Street, and the decorative business was being carried on?

Answer. I could not say I did not. I might have done it—I know I done it to one man, particularly.

Question. Did you wait on more than one customer in showing wall papers and talking to him about the papering of his house, or painting, or decorating of his house or property?

Answer. Mr. Ahalt, I guess I did, because Mr. Mann was on the outside considerably, and anything that came in the place, I took care of it for him. If anybody wanted to make a selection, I would show the samples, but I did the same thing with my business; I would show samples of window shades. I did the the same thing with the——

Question. As a matter of fact, Mr. Mann, during that time did a great deal of work, personally, of paper hanging?

Answer. Yes, sir.

Question. As a matter of fact, he did the great majority of it?

Answer. Yes.

Question. And he was out of the store at least three-fourths of the time?

Answer. I don't say three-fourths.

Question. I am asking you whether, as a matter of fact, he was not out of the store a majority of the time?

Answer. No, sir; he was not. He was in the store a majority of the time.

Question. At the same time he would do a majority of the work that was performed?

192 Answer. Well, the man inside of the store—his business was to wait on the customers, to take care of the trade, show the wall papers, and such as that, and the only time he would go out was when he went out to measure work or to collect any bills, or to attend to any work done.

Question. Do you mean to say that he did not do any paper hanging himself?

Answer. No, sir; he did not do any paper hanging himself.

Question. That is the only occupation he has, is it not?

Answer. He was for five years a wall paperer and decorator for somebody else.

Question. His principal occupation was a paper hanger?

Answer. His principal occupation was salesman. He knows the wall-paper business. He can hang paper. He can make awnings. He has worked for Hooper & Klesner hanging wall paper at different times.

Question. Was there anything on these premises at 733 Twelfth Street which would indicate to the public that there were being conducted there two separate and distinct lines of business under separate managements?

Answer. It was.

Question. What was it?

Answer. "The Decorative Shop, Wall Papers," and "The Shade Shop, Window Shades."

Question. Was "The Shade Shop," on the bay window, plateglass window there?

Answer. It was the same as Twelfth and H Streets.

Question. Referring to Commission's Exhibit No. 30, the words "The Shade Shop," and "Window Shades," are the only signs which appear on that building, and they are located over and above all windows, and between the first and second floor, are they not?

Answer. Mr. Ahalt——

Question. Just answer the question.

Answer. This picture was taken two days, or three days after I moved into this building and these signs were put up on that before I moved into that building.

Question (by Mr. HAWKINS). You say, "these signs."

Answer. "The Shade Shop, Window Shades," on the stonework was put up on the building before I moved in. The painter who had the contract to put the other ones up did not put "The Shade Shop, Window Shades" on the side until two weeks after I was in the building.

Question (by Mr. AHALT). What is the meaning of the curtain-like effect around the top of the window, show window?

Answer. That was taken down.

Question. That appears on this photograph.

Answer. That was taken down after the signs were up.

Question. Then, this photograph, Commission's Exhibit No. 30, does not correctly represent the advertising matter you had on the building at 733 Twelfth Street?

Answer. That correctly represents one week's sign of a period of five years.

Question. I say, this photograph does not correctly represent——

Answer. It does not.

193 Question. And there was nothing on the windows to indicate that two separate and distinct businesses, under two separate and distinct managements, were being conducted in that store, other than what you have stated, to wit, the names "The Decorative Shop," and "The Shade Shop"?

Answer. "The Decorative Shop," and "The Shade Shop," the only two names that were on the plate-glass windows.

Question. Now, Mr. Sammons, is it not a fact that most of the complaints which have come to your attention regarding a confusion of your place with that of Hooper & Klesner took place while you were at 733 Twelfth Street?

Answer. Ninety per cent of them.

Question. And you have not taken the trouble to recall or note any of the names of persons who have complained to you about any such confusion since you moved from 733 Twelfth Street?

Answer. I have not.

Question. Now, when you moved from 733 Twelfth Street did you send out any announcements or anything of your removal?

Answer. I did.

Question. Did you send out any letters soliciting business?

Answer. I did not.

Question. Did you ever solicit any of the customers of Hooper & Klesner?

Answer. I have never.

Question. You have no recollection of having solicited Mr. Appleby, with whom I assume you are acquainted?

Answer. What does he do; where is he?

Question. Mr. Appleby, of George J. Johnson?

Answer. Who is Mr. George J. Johnson?

Question. You do not know the gentleman?

Answer. Who is Mr. George J. Johnson?

Question. You never solicited, then, anyone after leaving Twelfth and H Streets, and moving to 733 Twelfth Street, wherein you quoted prices on shade work, and who were customers, old customers, of Hooper & Klesner?

Answer. Mr. Ahalt, it has been my custom to solicit any new building going up, any new real estate firm, or any place that I possibly can solicit trade for my shop, whether they are my previous customers or not. I would do the same thing to-morrow if I went out to look for business.

Question. Is it customary for you in approaching prospective customers or in doing a general soliciting of business by letters to quote prices on shades?

Answer. Yes, sir.

Question. Do you know the owner or manager of the Farragut Apartments?

Answer. I know the manager—what is the lady's name—I know her.

Question. Did you ever do any work for them prior to the time you went with Hooper & Klesner at Twelfth and H Streets?

Answer. I do not remember.

Question. Did you ever do any work since?

Answer. I do not remember.

Question. Did you ever solicit them?

194 Answer. I did not.

Question. You are positive of that?

Answer. Positive.

Question. You are equally positive that you have never solicited any of Hooper & Klesner's old customers for shades?

Answer. Why, I can not—I do not know what you mean—we will take N. L. Sansbury, I solicited a job—that is an old customer—for the new building. I was awarded the contract for the new building. That is one of the old customers, if that is what you call soliciting trade. I solicit any new building that need window shades.

Question. I will put the question this way: Have you ever solicited, since you left Twelfth and H Streets, and while on Twelfth Street at 733, any persons whom you knew to be old customers of Hooper & Klesner, and for whom you had done shade work while associated with Hooper & Klesner at Twelfth and H Streets?

Answer. Never, except N. L. Sansbury, as I say. There are several people that have done work for him in the last five years; at least five different firms.

Question. How about the Waggenhoust estate; did you ever solicit them?

Answer. I have never solicited them, either verbally or in writing.

Question. Mr. Sammons, you say that Sansbury Co. has repeatedly asked for estimates from several concerns. Now, is not that also true as to Weaver Brothers, Shannon & Luchs, and several of the other real estate firms that you mentioned in your direct testimony?

Mr. HAWKINS. I want to object to the question.

The WITNESS. Weaver Brothers, H. L. Rust, Moore & Hill, Shannon & Luchs, all those firms that I mentioned, any work that did not require an estimate from the owners, I did the work. Where estimates were required from the owners, they were obliged to ask for one or two estimates.

Question (by Mr. AHALT). Then you did not propose to have the commission understand when you testified yesterday, when Commis-

sion's Exhibits 33 to 41, inclusive, were introduced, that you did exclusively all the shade work for them?

Answer. I do.

Question. You mean by "I do," that you have exclusively done their work?

Answer. I don't remember of ever losing a job for them. When the estimates were received from other competitors my proposal was always lower.

Question. How is that—read the answer, Mr. Reporter.

(Thereupon, the reporter read the answer.)

Question (by Mr. AHALT). How do you know that, Mr. Sammons?

Answer. By being informed so and seeing the other written estimates.

Question. That was invariably so?

Answer. 95 per cent.

Question. You say it was 95 per cent.

Answer. I am almost positive of the orders.

Question. How do you arrive at any such 95 per cent basis of calculation when you make such a statement?

195 Answer. If they ask me for 10 estimates, I get over 9 of them. That is the only basis.

Question. Then it is a fact that several of these firms whose names appear on Commission's Exhibits No. 33 to 41, inclusive, have sought out and asked estimates of other shade manufacturers than yourself for a great deal of work that they have desired done?

Answer. Not a great deal; just a small portion of it.

Question. You have no personal knowledge of how much work each one of these real estate firms mentioned in the various exhibits which I have just referred to actually have to do, have you?

Answer. Mr. Ahalt, every one of those exhibits was shades for windows, an order for work. They don't show the estimates that were received——

Question. I do not imagine that you would bring them here and introduce them, requests for estimates.

Answer. I have some, A. C. Moses, where they accepted my estimate. I have some from two or three of them.

Mr. AHALT. Read the question.

(Thereupon, the reporter read the question, as follows:)

"You have no personal knowledge of how much work each one of these real estate firms mentioned in these various exhibits to which I have just referred actually have to do, have you?

The WITNESS. What do you mean, "have to do"?

Question (by Mr. AHALT). The work they had to do. You have not any direct knowledge of just how much work they had to do in the line of shade work, have you?

Answer. Only from what they tell me.

Question. Now, Mr. Sammons, referring to Commission's Exhibit No. 33, that postal card is addressed to "Shade Shop," is it not?

Question. And that was at a time when you were with Mr. Derrick at 819 Fifteenth Street?

Answer. It is.

Question. Referring to Commission's Exhibit No. 41, that order for shades, from Shannon & Luchs, is addressed to "Shade Shop, 733 12th Street, Northwest," is it not?

Answer. Yes, sir.

Question. And you received that postal card in the usual course of business?

Answer. Yes, sir.

Question. Now, Mr. Sammons, at the time while you were on Twelfth Street, 733, did you have any difficulty with the mail service there by reason of the fact that Hooper & Klesner also had on their windows the words "Shade Shop"?

Answer. I went to the Post Office Department and had a personal interview with the Third Assistant Postmaster General. I put my case up to him, and he favored me, and he said that I was right, and gave instructions that all mail addressed as "The Shade Shop," or "Shade Shop," should go to 733 Twelfth Street. That was his orders.

Question. Then some of the orders you received might have been intended to be addressed to "Shade Shop, 12th and H Streets"?

196 Answer. I have never received an order "Shade Shop," at Twelfth and H Street, intended for Hooper & Klesner.

Question. How do you know it was intended for Hooper & Klesner or not if all mail which was addressed to "Shade Shop, 12th and H Streets," was, by instructions, delivered to your place at 733 Twelfth Street?

Answer. They might have got some mail, understand.

Question. I am asking you how do you know that some of the orders which you received for shade work were not really intended for Hooper & Klesner?

Answer. I know it.

Question. I ask you, how do you know?

Answer. I never received one that was intended for them.

Question. How do you know that, I ask you?

Answer. Well, all my customers, people I did work for previously, when I was at Twelfth and H——

Question. Do you have any knowledge of the fact that Weaver Brothers, either directly or indirectly, have ever given Hooper & Klesner an order for shades?

Answer. I do, and I can state the circumstances.

Question. They have given Hooper & Klesner an order?

Answer. They have.

Question. They have asked Hooper & Klesner to estimate on shades, have they not?

Answer. They have.

Question. They have, within the last couple of years, we will say. Did that occur very frequently?

Answer. That was only when Weaver Bros. had charge of The Alabama Apartment. The C. & P. owned that building, and Weaver Bros. were the agents and they had instructions to give the window-shade orders to Hooper & Klesner. I have bid on several jobs, but it was impossible to throw me the job. There was instructions to give Hooper & Klesner the shade business on that building.

Question. Is that the only building that you know of where you were requested to estimate and where Hooper & Klesner were requested to estimate for Weaver Bros. on shades to be installed?

Answer. That is the only one that has come under my observation.

Question. Then Weaver Bros. can hardly be said to be any more the customers of Hooper & Klesner than they are of The Shade Shop?

Answer. I am perfectly willing for Mr. Hawkins to subpœna any of the people, such as Weaver Bros.—any of them will tell that I do 90 per cent of the window shade work of that firm.

Question. So far as you know, Hooper & Klesner might do the other 10 per cent?

Answer. Yes, sir.

Question. Then you do not care to have the commission believe that you do all of the work for all the firms mentioned on these exhibits, commission's Exhibits Nos. 33 to 41, inclusive?

Answer. I do not.

Question. There was no actual division, so far as occupation was concerned, or the privilege of use was concerned, of the storeroom at Twelfth and H Streets, when occupied by both you and the firm of Hooper & Klesner? I mean by that that you had the
197 privilege of going about the store and having your customers do so, and employees?

Answer. Yes, sir.

Question. And you shared the store jointly?

Answer. Yes, sir.

Question. While there, really, you held out to the public any and all of the advertising matter that was contained on the windows there, by way of signs, and so forth, as a sort of a joint proposition for solicitation, or the getting of business?

Answer. Yes, sir.

Question. You figured by that that really it would be beneficial to you both, did you not; that is, being associated there together, that you would get some business from the customers of Hooper & Klesner, and then, in turn, they could send you business?

Answer. No, Mr. Ahalt. Their work that they always had previously, they still did the work, and the only jobs, the only work that I benefited from was the work I had got when I was at 724 Eleventh Street and 819 Fifteenth Street.

Question. You said awhile ago, I believe, in your testimony this forenoon, that the arrangement was that all persons coming into the store, who were strangers to either firm, were to be turned over to you, those who were seeking shades?

Answer. I advertised for them. I started advertisements in the papers.

Question. Such as might have come in, not having seen the advertisements and signs on the windows—you benefited by that arrangement, did you not?

Answer. Yes, sir.

Question. And Hooper & Klesner really lost by that arrangement because they had been in business there themselves and you had not been, and when somebody came in for shades they would have gotten the orders instead of yourself?

Answer. Yes, sir. I do not think they would have gotten any work.

Question. I am asking regarding orders, now, you understand.

Answer. I had to advertise. I advertised my business, and that brought trade.

Question. You and Mr. Klesner have not been on very good terms since the gun-toting proposition, have you?

Answer. No, we have not.

Question. You have, if anything, been on what might be termed ill terms?

Answer. Absolutely.

Question. There has been a great deal of feeling between the two of you?

Answer. There has.

Question. I believe you filed suit in the Supreme Court of the District of Columbia some time in the early part of December, or within a month or so from the time that you vacated the premises at Twelfth and H Streets.

Answer. It was immediately afterwards.

Question. And by that suit in equity, I think known on the dockets of that court as Equity No. 33946, you sought to enjoin the
198 firm of Hooper & Klesner from the use of the words "The Shade Shop," did you not?

Mr. HAWKINS. I am going to object to your proving what was in the bill of equity in another suit unless you bring in the original bill or a certified copy of it.

Examiner DUNHAM. I understand the question was whether he did file a suit.

Mr. HAWKINS. He said he did. I think he proved that fact. Now he commences to ask the witness what was in the bill, and I say the witness can not tell that, and I want that to go into the record.

Mr. AHALT. I want the record to show this statement by me before the witness answers that question, and that is this, that we will show and produce at this hearing a certified copy of all the papers

which are now in the files of the Supreme Court of the District of Columbia, as the same pertain to this particular equity cause 33948, and that the papers which we will introduce as certified copies of that proceeding, consist of the answers of the defendants in that case, and the respondent here, supporting affidavits, and an order discharging the rule to show cause, which was issued when the suit was filed, and I want the record to show that I tender myself as a witness to prove the following facts: That between the dates of February 11 and February 17, that the original bill and rule to show cause were extracted from the papers in the file in this particular case and have never been returned. I tender myself to testify that I personally visited the clerk's office, examined the files, made a rough copy of the bill of complaint and rule to show cause, answers, and so forth, and that I later, on the 17th day of February—I think that is the date; at least, it was the day before this case was set for hearing—I returned to the courthouse and ordered a certified copy of the entire papers of that file, and at that time the bill of complaint and rule to show cause were not in the file, and they have not been replaced there since.

(Prolonged argument off the record.)

Question (by Mr. AHALT). Mr. Sammons, will you please state whether or not you did file in the Supreme Court of the District of Columbia in the month of December, 1915, a bill of complaint, wherein you sought to enjoin the respondents, here, and the then defendants, Harry S. Hooper and Alfred Klesner, trading as Hooper & Klesner, from using the words "Shade Shop" in connection with their business, which they were then conducting at the corner of Twelfth and H Streets NW., Washington, D. C.?

Mr. HAWKINS. I will interpose the same objection.

(Prolonged argument off the record.)

Examiner DUNHAM. Now, Mr. Witness, the objection has been entered and you can answer the question if you know what was in the bill.

The WITNESS. I do not know what is in the bill.

Question (by Mr. AHALT). Mr. Sammons, I will ask you whether or not the main object of this suit to which I have just referred, in the Supreme Court of the District of Columbia, was not for the purpose of enjoining Hooper & Klesner from the use of the words "Shade Shop," in connection with their business, and maintained by signs on their building?

199 Mr. HAWKINS. I will object for the reason that it is incompetent to ask a witness what the main object of the lawsuit was. If the lawsuit had a purpose it would be disclosed in the prayer for relief and it would speak for itself. He might have had some other object in view that would not be at all material or the plea of res judicata.

The WITNESS. I do not know what was in the bill, so I do not know what the object was. If I had a bill to read over, to refresh my mind, I could answer the question.

Question (by Mr. AHALT). Do you mean to tell this commission that you do not know the main basis of your suit that you filed in December, 1915, against Hooper & Klesner?

Answer. I do know the main thing.

Question. Well, what is it?

Answer. To enjoin them from using my name; my trade name.

Question. What trade name?

Answer. "The Shade Shop."

Question. Did you contend that they used the words "The Shade Shop," in that suit?

Answer. No; because——

Mr. HAWKINS. I am going to object to all of this now. We are going to start to try another lawsuit.

(Argument off the record.)

Examiner DUNHAM. Mr. Witness, if you can answer the question, please do so. Mr. Ahalt insists on an answer.

The WITNESS. The first question he asked me, I said I could not, because I do not know if it was in the papers. The next question, "The Shade Shop," or "Shade Shop"—I have traded under the name of "The Shade Shop," and everybody knew me under "The Shade Shop," or "Shade Shop." It was a common way, to use postal cards and letters, bills, and bids, that had been used for four or five years previous, and people had called me "Shade Shop," which is the same as "The Shade Shop," just knocking the "The" off. It was plain to see that I executed the order.

Question (by Mr. AHALT). Mr. Sammons, since your last answer, then, it is clear to your mind as to the main object of this suit which was filed—that is, the main object and purpose of it—was to enjoin the use of the words "Shade Shop," which were being used by the respondents?

Mr. HAWKINS. I object to the question for the reason that it is incompetent, and you started out to prove by parole evidence the main object of a lawsuit under a plea of res judicata. The witness may have had several main objects and they may not have been in the pleadings, not been issues in the lawsuit, and the complainant witness here might not have known it, or it might not be material to this case. I therefore object to your proving by this witness what he thought was the main object of that lawsuit.

Examiner DUNHAM. You may answer the question, Mr. Witness.

The WITNESS. I think my last answer covered the answer. The main object was that they were opening up a business and putting signs on their windows the same as I have previously had; signs with the same background, the same letters, that I had up on the windows. I had had my firm as "The Shade Shop," and my customers for two years have recognized that place by my signs
200 on the windows, and they were keeping the identical signs that I had previously. I went to the court and asked for an injunction against them.

Question (by Mr. AHALT). Your recollection is clear as to those facts as to what had been done on the part of the respondent here and what you proposed to enjoin them from doing?

Answer. Yes, sir.

Question. Now, Mr. Sammons, when you and Mr. Mann were associated, or when Mr. Mann came to 733 Twelfth Street, did you seek to enter into this arrangement that was accomplished, or did he seek you out in connection with it?

Answer. He made the proposition to me.

Question. He was a salesman, or connected with the Cornell Wall Paper Co. at that time, was he not?

Answer. No; he had been working for me about a year previous to this at Twelfth and H Street.

Question. In the shade-making business?

Answer. Manufacturing; he was a shade-maker, too.

Question. How long was it between the time that Mr. Mann left 733 Twelfth Street and the date of the sale by you to Hinkle & Cohen of the stock of goods and the good will of The Decorative Shop?

Answer. I could not state exactly.

Question. Approximately?

Answer. I could not do that. I do not remember.

Question. Was it a month?

Answer. Oh, much longer.

Question. Was it five months?

Answer. Oh, yes.

Question. A year?

Answer. Possibly a year.

Question. Who conducted the paper-hanging business and the decorative-shop business during that time?

Answer. Mr. Mann took a partner by the name of Jesse M. Dunn, and they ran the business up until Jesse M. Dunn—he had some trade, and he put in a lot of time at the place in helping Mr. Mann.

Question. I am speaking now of the time—probably you do not understand me. Who ran The Decorative Shop and conducted the business of The Decorative Shop, of papering and painting, etc., from the time Mr. Mann left there until you sold the goods to Hinkle & Cohen?

Answer. Was not a week. The place was closed down for about a week. When I had made arrangement to get my money out of it, I notified Mr. Mann, and it was satisfactory to him. I sold out the stuff—everything in there—and the good will to Hinkle & Cohen about a week afterwards. They did not move in right away. Nobody conducted the business during that time.

Question. Mr. Sammons, in your advertisements in the telephone directory, in the classified department in the rear of the book, do you recall whether or not you used in connection with the ad. of "The Shade Shop" your name as proprietor?

Answer. I do not remember. I guess I did. I know I do now.

201 Question. Did you carry such an advertisement in the telephone directory prior to the time you were with Mr. Derrick?

Answer. I did not.

Question. Did you carry such an ad. while you were at Twelfth & H Streets?

Answer. I did.

Question. Can you recall whether you had your name as proprietor in that ad.?

Answer. Very likely I did. I am almost positive that I did.

Question. Mr. Sammons, is there any word that you know of, or words which could be used in connection with the making up and manufacturing of shades which would convey the same meaning as "Shade Shop," and be anything like as abbreviated as those words are.

Answer. Manufacturers of window shades; window-shade makers.

Question. You think that "window-shade makers" would convey the same meaning as the words "shade shop?"

Answer. No, I do not say that. You asked me in regard to window shades, what could be used the same as "The Shade Shop," or "Shade Shop."

Mr. AHALT. Read that first question, Mr. Reporter.

(Thereupon, the reporter read the question, as follows:)

"Mr. Sammons, is there any word that you know of, or words which could be used in connection with the making up and manufacturing of shades which would convey the same meaning as "Shade Shop," and be anything like as abbreviated as those words are?"

The WITNESS. What do you mean by "abbreviated?"

Question (by Mr. AHALT). In as few words.

Answer. I corrected your second sentence you said to me. The last remark I made was the answer to the first question. I said you could make it "manufacturers of window shades," or "shade makers," the same as you could use "The Shade Shop," or "Shade Shop."

Question. Do you think that the words "shade makers" would convey the same meaning to the public as to the business conducted as the words "Shade Shop"?

Answer. I do not.

Question. Well, I do not reconcile your two answers, personally. That was my first question, or the previous question.

Answer. If you say "The Shade Shop," the public will know—if you have "The Shade Shop" on the windows, the public will know it is the name of a business.

Question. They would not think that was a place where shades were made?

Answer. Unless you had "Window Shades" in conjunction with it.

Question. Do you mean to state that if a man had "The Shade Shop" on his place of business and had nothing else, or, in other words, did not have "Window Shades," that the public might think he was conducting a dry goods store?

Answer. Oh, no.

Question. You say that would be the name of a business.

202 Answer. It would, and also that it does signify they manufacture shades, there, yes, I do, absolutely.

Question. Then, do you consider that there are any words which convey the same meaning to the public as to the business conducted on the premises as to the words "Shade Shop"?

Mr. HAWKINS. Under what circumstances, now?

The WITNESS. That is what I would like to know.

Mr. AHALT. Now, let the witness answer the question. I submit that this witness has sufficiently qualified to answer any question pertaining to the use of the words "shade shop" or anything in connection with the shade business. The question can be answered by him.

The WITNESS. Mr. Ahalt, I answered that question.

Mr. AHALT. Let us have the answer again, just for the fun of it, if nothing else.

Examiner DUNHAM. Read the question, please.

(Thereupon, the reporter read the pending question.)

The WITNESS. I can not quite get that question. I can not get it at all. In what way do you mean it, Mr. Ahalt?

Question (by Mr. AHALT). What do the words "shade shop" mean to your mind.

Answer. The words "shade shop" mean to my mind a place of business, a trade name and a man's business.

Mr. HAWKINS. Now, do you mean when you ask regarding "The Shade Shop" the way he uses it?

Mr. AHALT. No, he knows what I am asking. I used the words "shade shop," not "The Shade Shop."

The WITNESS. I have never seen the words "shade shop" used any place before, except in my business, and then when Mr. Klesner started out in his business. You will never find "The Shade Shop" in any place in the United States.

Question (by Mr. AHALT). When I asked you what words you could substitute, if you can substitute, that would convey the same meaning to the public as do the words "Shade Shop" as to the business conducted on the premises——

Mr. HAWKINS. I will object to that as being incompetent and immaterial as to what he might do in this case, growing out of an alleged appropriation of a trade name. Now, the question of whether he might have used some other name—he might have had the trade name of "John Smith, Shade Shop," if he wanted to—is immaterial in this case. I want the record to show my objection.

The WITNESS. If Mr. Ahalt has reference to the style of a man's business he intends to run—do you mean that?

Mr. AHALT. I am asking you to either answer the question or state that you can not answer it.

The WITNESS. Read the question over, will you?

(Thereupon, the reporter read the question as follows:)

"Then, do you consider that there are any words which convey the same meaning to the public as to the business conducted on the premises as do the words "shade shop"?

The WITNESS. What other name could I use to the public?

Mr. AHALT. I am asking you, does the words "shade shop" convey the same meaning——

203 The WITNESS. I asked you that; do you mean the style of the business?

Question (by Mr. AHALT). Mr. Sammons, I am going to try once more to make myself clear. Is it possible for you to substitute any words which, to your mind, and with your experience in the shade business, would convey to the public the same meaning as to the business conducted on those premises as do the words "shade shop"?

Answer. I could not.

Question. Could not substitute any other words?

Answer. I have established that name too long to substitute any other name.

Question. Could you substitute anything in your mind?

Answer. I could not substitute anything in my mind.

Question. Then the words "shade shop" have what particular significant meaning as they pertain to a shade business? I do not want to know anything about the words "the shade shop" or why you have used them.

Mr. HAWKINS. Well, that would naturally come into it.

Mr. AHALT. Let him answer it the way he pleases.

The WITNESS. When I first opened a business——

Mr. AHALT. Just a minute; answer the question. I would like to get these answers as responsive as possible. Read the question.

(Thereupon the reporter read the pending question.)

The WITNESS. When I first opened my business, went in the business of manufacturing window shades, I adopted that name "The Shade Shop" because I manufactured and sold window shades. I adopted that name for a trade name.

Question (by Mr. AHALT). Does it, in your opinion, convey to the public the idea that it is a place where shades are made?

Answer. It is.

Question. Do you think that that particular expression, "shade shop," conveys any definite meaning that this is a place where shades are made and not necessarily a place where window shades can be purchased?

Answer. Either one. It can be purchased there or made there.

Question. Well, you can buy shades at lots of places, but does this expression "shade shop" to you convey the meaning that you can have them made up there or just purchase them?

Answer. I said make them or sell them. Suppose a man would make them, what would he do with them?

Question. I am not asking you that——

Answer. I am asking you. I want to get the difference between the two words, in making or selling them.

Question. You do not distinguish, then, between a place that merely sells window shades and advertises window shades and a place that advertises "shade shop" or a place that makes shades—you do not distinguish between the two?

Answer. I certainly do.

Question. What distinction do you consider there is?

Answer. It does. The place that has window shades, could have cut dry goods, hardware, which they do—I know a hardware store that sells window shades, and paint, and things.

Question. What does a shade shop, do then?

204 Answer. The shade shop is an exclusive place, that handles nothing but window shades. That is my distinction of a shade shop and ordinary window shades.

Question. You do not think it is a place where they just make up shades and sell them, of course?

Answer. Absolutely. The Shade Shop is an exclusive place and handles nothing but window shades and sells them.

Question. Then, "Hooper & Klesner's Shade Shop," is a misnomer. When they advertise "Shade Shop," they have misnamed their business, because they are not exclusively in the shade business, manufacturers and sellers of shades; is that your idea?

Answer. No, that is not my idea, at all, because you asked me as to conveying to the public the idea of the words "The Shade Shop," and I have told you what I thought——

Question. Not "the shade shop."

Answer. "Shade shop"; I think they are misleading the public by using "Shade Shop" when they know, and the public knows there is a shade shop, and advertising as "The Shade Shop."

Question. You think because they use the words "Shade Shop" on their place of business in connection with their name, and in connection with the other words, "Painters, Wall Papers," that they are misleading the public into the belief that it is a place where they manufacture shades, exclusively?

Mr. HAWKINS. I am going to object to that. That is the question that is going to be decided, and it is entirely improper to clutter the record up here with what the witness may think or I may think, or you may think. Mr. Ahalt and I can argue that to the commission. The commission is going to decide that question.

Mr. AHALT. I submit that this witness's opinion, for the purposes of enlightening the commission on what meaning these words con-

vey to the public, is just as good and sufficient, and is as relevant and is as competent evidence as this commission can procure in any part of the United States for the reason that this witness has testified that he has been in business for 20 years, and has almost been the exclusive manufacturer of shades and has done 90 per cent of the work or so that has been done in this city.

Mr. HAWKINS. But your last question asks the witness for his opinion as to the legal effect.

Mr. AHALT. No, sir. Read the question. It will show that it does not ask that.

Mr. HAWKINS. Let us have the question, then. Perhaps I am wrong.

(Thereupon, the reporter read the pending question.)

The WITNESS. I do think they are misleading the public.

Question (by Mr. AHALT). Do you want to qualify that answer, or leave it stand at that? The question involves more than that.

(Discussion off the record.)

Mr. AHALT. I think that is about all I want to ask.

Examiner DUNHAM. We will take a recess until 10 o'clock tomorrow morning.

(Thereupon, at 4.30 o'clock p. m., a recess was taken until April 20, 1921, at 10 o'clock a. m.)

205 April 20, 1921

Before the Federal Trade Commission

[Title omitted.]

ROOM 2702, FEDERAL TRADE COMMISSION BUILDING,
Washington, D. C., Wednesday, April 20, 1921.

Met pursuant to adjournment at 10 o'clock a. m.

Before: Examiner J. J. Dunham.

Appearances: As heretofore noted.

PROCEEDINGS

LUTHER L. DERRICK was thereupon called as a witness on behalf of the respondent, and having been previously sworn, testified as follows:

Direct examination by Mr. AHALT:

Question. Mr. Derrick, you are Mr. Luther L. Derrick?

Answer. Yes, sir.

Question. Will you please state your present occupation?

Answer. Well, I am a real estate salesman at the present time.

Question. What was your occupation for several years prior to 1910 and 1911?

Answer. Wall paper, window shades, and painting.

Question. How long were you engaged in that business, Mr. Derrick?

Answer. About 18 years.

Question. When did you discontinue the business?

Answer. October, 1918.

Question. To what extent did you deal in window shades prior to the years 1910 and 1911?

Answer. What do you mean by "extent"? We took all the orders that we could get made; all the shades we could, but I do not know as I have any figures I could give you as to the amount.

Question. No, I don't want the figures. What would you do with the orders that you got for the shades to be made, measured prior to that time, or during that time?

Answer. We made some ourselves, and we got Mr. Sammons to make some of them.

Question. Will you state whether or not some time during the year 1911, and while Mr. Sammons was conducting a business of making shades at 724 Eleventh Street, you had made any contract with Mr. Sammons with reference to the business conducted under the style and trade name of "The Shade Shop"?

Answer. Why, Mr. Sammons was making some shades for me at the time, and it seemed that he was not in a position to get the material. Order were being held up, and I made the proposi-
206 tion to Mr. Sammons that I would buy the stock and finance it if he would turn out the work on a weekly drawing allowance and percentage, and he said, "Let me think about it two or three days, and I will let you know." So, I guess it might have been a week, when he came in and said, "All right;" he had decided to do it.

Question. That while he was on Eleventh Street?

Answer. Eleventh Street, 724.

Question. About how long prior to the time that he left Eleventh Street with that business; just approximately?

Answer. Well, I think it was in November or about some time in November, about the 1st of December, 1912, that we gave up that place and moved the shop up to 819 Fifteenth Street.

Question. Now, Mr. Derrick, will you state what control, if any, you had over this business while it was conducted at No. 724 Eleventh Street after you made this arrangement with Mr. Sammons?

Answer. What control—I had no control at all, excepting I furnished the stuff and paid for the material, and paid the wages and Mr. Sammons did the rest; did the collecting, and made the returns.

Question. Did you consider that you were the owner of that business, or not, under the arrangement and contract you had with Mr. Sammons?

Answer. As far as the contract is concerned, there was nothing but a verbal understanding. We had no contract, at all, as far as the written contract was concerned; none whatever. The only contract was, that we had, was that he was to get $20 a week, and 10 per cent of the net proceeds.

Question. And you were to get the rest?

Answer. The balance, of course, was to go to the firm of Luther L. Derrick Co., then, but, of course, I was the company, and the firm, too.

Question. Did you consider that you were the owner of that business?

Answer. Well, now, I have given you the facts in the case, and you can put your own interpretation on it. It might be a different interpretation put on it. Those are the facts.

Question. I will ask you this, then, when you made this arrangement with Mr. Sammons and agreed, we will say, to finance him and to take 90 per cent of the profits, net profits, did you consider that you were buying this business and that you would have control of the business.

Mr. HAWKINS. I will object to that question. I think the witness has in his last answer shown the reasons for my objection. He has stated the facts.

The WITNESS. Those are the facts in the case. I might say this for the information of the court and all concerned, that there was not a scratch of pen writing, or lead pencil, or anything else in regard to the arrangement, just simply a verbal, mutual understanding.

Mr. AHALT. Will you inform the witness, Mr. Examiner, the mode of procedure is that after the objection is in, he may answer?

207 Examiner DUNHAM. Mr. Witness, our procedure is that when a question is asked and there is an objection made, the record takes care of that, and after the objection is made you will just answer the question as if no objection had been entered.

Mr. AHALT. Now, Mr. Reporter, will you repeat the question to the witness?

(Thereupon, the reporter read the pending question.)

(Discussion off the record.)

Question (by Mr. AHALT). The question was whether you considered that you were the owner of the business and had bought the business and had control of it?

Answer. I was the owner, as far as the agreement went, the mutual understanding went.

Question. How far did you consider this agreement went in that particular?

Answer. Ninety per cent of the net profits.

Question. Now, Mr. Derrick, later on, I believe, as has been testified here, the shade business was moved to 819 Fifteenth Street. Will you state under what circumstances that move took place and at whose suggestion or for what reason?

Answer. I was then at 809 Vermont Avenue, under a monthly agreement, and through arrangements with the firm of Swartzell, Rheem & Hensey Co., I leased the building at 819 Fifteenth Street, for a term of 5 years, beginning with November 1. I was paying a rent at 819 Fifteenth Street, and we were paying a rent at 724 Eleventh Street. In the building at 819 Fifteenth Street, we had ample room there for all the business that we were doing, and I

therefore assigned the second floor of the building, the front part of the second floor at 819 Fifteenth Street, to The Shade Shop, under the management of Mr. Sammons, and he moved in; had all of his stationery printed accordingly, and went to work along, I think right near the first of December; some time in November, between the first of November and the first of December, and then I think it was about the 12th or 15th of December, some time between the first of December and Christmas, that I moved around on the first floor with my wall-paper department, storing wall paper in the rear part of the second floor, and therefore, we had the business all under one roof.

Question. Was that your desire, to have the business all under one roof?

Answer. Yes, sir; it was, sir.

Question. Prior to the time that that business was moved to 819 Fifteenth Street, is it not a fact that Mr. Sammons collected the moneys and kept the accounts and deposited the moneys derived from the shade business in the bank in the name of "The Shade Shop"?

Answer. Well, now, I am not clear about that. I am not exactly clear about that. While we were on Eleventh Street, it might have been, but I am not clear about it.

Question. When you moved to 819 Fifteenth Street, how were the moneys collected and deposited?

Answer. All returns were made to Luther L. Derrick Co. and deposited.

208 Question. Who made the purchases in connection with this business?

Answer. Why, Mr. Sammons made the selections and brought down the amount of stuff, and the quantity, and so forth that he wanted, and we O. K.'d it, and it was sent in.

Question. Who placed the orders, The Shade Shop?

Answer. The Shade Shop.

Question. Or Luther L. Derrick?

Answer. The Shade Shop?

Question. Whose credit was used in writing these orders?

Answer. My credit.

Question. Then these orders were placed in your name?

Answer. Yes, sir. They come billed to Luther L. Derrick Co.

Question. You paid all of these bills?

Answer. I paid all of these bills.

Question. What about the pay roll. Were the pay rolls made up and paid——

Answer. The pay rolls were made upstairs and brought down to us Friday evening, and we furnished the money for them.

Question. What arrangement or understanding, if any, did you have with Mr. Sammons when he first entered into this arrangement to finance and divide the profits as you have described, as to the name under which the business was to be conducted?

Answer. "The Shade Shop." We would continue the name just as it was.

Question. The name "The Shade Shop" was used while at 819 Fifteenth Street?

Answer. Yes, sir.

Question. Where, if any place, were signs placed on this building at 819 Fifteenth Street, relating to "The Shade Shop"?

Answer. As my recollection serves me, there were two small signs about three by two placed right at the second story of the building on either side of the balcony that was there—had the name "The Shade Shop."

Question. Were there any signs on the first floor anywhere about the entrance, or on the windows?

Answer. On the bay window there was—it is an octagon bay window, well I guess—no; it was not octagon—it was a six. There was three glasses; a larger front glass and a smaller glass on each side, and below the glass was a little panel; I guess that bay window is about 3 feet high from the ground, and in there was a panel. We had on one of these little panels, "Window shades," and on the other "wall papers," and I forget what was on the other, "decorations," or something.

Question. Was there anything on that building, Mr. Derrick, on the outside which would indicate to the public that the business of The Shade Shop and the Luther L. Derrick business were separate and distinct concerns, or businesses conducted by separate and distinct people?

Answer. Those are the signs that were on. I have given you the signs, and the only other sign there was a big sign in black and gold, "Luther L. Derrick Company."

209 Question. Did Mr. Sammons' name appear on the building anywhere as manager?

Answer. No; not on this building.

Question. I show you the Commission's Exhibit No. 14, and ask you to state whether or not that is a billhead which was used in connection with the shade business while at 819 Fifteenth Street?

Answer. Yes, sir; it is.

Question. That is, "W. Stokes Sammons, Manager"?

Answer. Yes, sir.

Question. Did that appear on all of the stationery?

Answer. The Shade Shop stationery?

Question. Yes; I mean that.

Answer. Yes.

Question. Did the words "W. Stokes Sammons, Proprietor," appear on any of it?

Answer. No, sir.

Question. Was there any particular reason why "manager" was used there?

Answer. Well, he was managing The Shade Shop. That is the only reason I could give.

Question. Did you have any discussion with Mr. Sammons or make any suggestions about putting that name on there in that form, "W. Stokes Sammons, Manager"?

Answer. Well, I can not—I do not know as I remember that, Mr. Ahalt. There must have been some understanding about it, or it would not have gone on—I would take it to mean that.

Question. Did Mr. Sammons ever suggest using the word "proprietor"?

Answer. No.

Question. Now, Mr. Derrick, Mr. Sammons left you, I believe, some time in the spring of 1914 and moved to Twelfth and H Streets?

Answer. Yes, sir.

Question. What discussion, if any, did you have with Mr. Sammons with reference to the name "The Shade Shop" being carried with him?

Answer. I heard before Mr. Sammons said anything about going—I heard from the outside that he was thinking about going, and I went to him and asked him if it was so, and he said yes; that he thought he would make a change; and I do not just remember the conversation we had about it, excepting that all of the outstanding obligations—of course, I assumed all bills that were unpaid—I was to collect, and all bills outstanding that was not paid I was, of course, under obligations to pay, and he spoke about the disposition of the business; said he was going to take that with him. I says, "Well, if that is your decision, are you going to take 'The Shade Shop' and your business with you?" And I said, "We will run under our own name;" and I think I had some notices probably put in the paper. I do not believe I have any of them with me, but I had some notices printed and sent out, and we had all of the books made up to date, and outstanding bills we collected what we could. Some I do not know whether we ever did collect or not. Some of them refused to pay when we went to collect them, because of the fact that they said they did not know anything about the Luther L. Derrick Co. having anything to do with The Shade Shop, and
210 if the bills were O. K'd by the manager of The Shade Shop, or Shade Shop, they would pay them. I understand a few of them were paid through that process, and others were not denied at all and paid.

Question. How frequently did you and Mr. Sammons have settlements under this arrangement you had about the division of proceeds, net proceeds of the business?

Answer. Well, I presume it is the same with most any business, when anyone is working on a commission basis, salary and commission basis, there is always a certain amount of advances made, and so forth, and then, the first of the year, we always, whatever was the balance, we cleared it up.

Question. You took 90 per cent and Mr. Sammons took 10 per cent?

Answer. Yes, sir.

Question. Did Mr. Sammons give you any notice about leaving on the last settlement you had, that is, for the year 1913? Did he tell you at that time that he was to open up——

Answer. I just said a while ago that he did not say anything to me about going until I had mentioned it to him; spoke to him about it.

Question. Was your information that he was going to open up elsewhere; that he was going to open up at Twelfth and H Streets?

Answer. Yes, I understood he was going down there with Hooper & Klesner.

Question. Then it was about May when you first learned, or April, that you first learned that he was going?

Answer. To tell the truth, Mr. Ahalt, I do not have just the dates or just the time when it was.

Question. Did Mr. Sammons, after having told you that he was going to leave, assist in instructing anyone there for you in the shade business?

Answer. No; my nephew was working with him before he—during the time that he was there my nephew was there.

Question. How long prior to the time Mr. Sammons left was this nephew there?

Answer. I do not know—Milton, I guess was working there—I do not know just how long it was.

Question. A matter of a year?

Answer. Probably six months or a year.

Question. During the time he was working there, prior to the time that Mr. Sammons left, you did not know that Mr. Sammons was getting ready to leave?

Answer. No; I did not know it until I heard it on the outside at first.

Question. I believe you have already stated that you continued the business under the name of "Derrick Shade Shop"?

Answer. Yes; we had the signs that had "Shade Shop" on the outside of the building—we had those signs changed and had "Derrick Shade Shop" put on.

Question. How long did you continue the business of making up shades under the name of "Derrick Shade Shop" after Mr. Sammons left?

211 Answer. Until we sold out.

Question. That was, then, from about April or May of 1914 until you said, "October, 1918"?

Answer. Yes; I think it was in 1918 that we sold out to the Housing Corporation—closed out the stock.

Question. Did Mr. Sammons at any time object to your use of the words "Derrick Shade Shop" as a trade name?

Answer. No.

Question. Did he ever complain to you that there was any confusion among his customers as to the business, in that they were trading with you, rather than with The Shade Shop, because of the fact that you were using the words "Derrick Shade Shop"?

Answer. I do not know of any at all.

Question. Did you do any advertising under that trade name "Derrick Shade Shop"?

Answer. Derrick Shade Shop?

Question. In the newspapers?

Answer. Well, I would not be certain about that, Mr. Ahalt.

Question. What advertising would you do?

Answer. Milton had charge of it. I do not know; I do not remember. I know he had cards made out, "Derrick Shade Shop" and "J. Milton Derrick, Manager."

Question. Did this nephew of yours act in the same capacity as Mr. Sammons?

Answer. Yes. I made the same arrangements with him.

Question. In other words, you put him on a salary?

Answer. Salary and commission.

Question. Salary and commission basis, and that was the arrangement you had with Mr. Sammons?

Answer. Yes, sir.

Question. Did you have any particular reason for using the words "Shade Shop" in connection with your name—that is "Derrick Shade Shop"?

Answer. Well, for the simple reason that Milton was very anxious to make a reputation as he had been working with Mr. Sammons in The Shade Shop, and he wanted to continue the window-shade business, and I could not take care of it, so I just simply assigned it over to him under the same arrangements.

Question. How long have you know the firm of Hooper & Klesner, Mr. Derrick, approximately?

Answer. I do not know how long.

Question. Approximately. You knew them when they were on Eleventh Street, did you, opposite this No. 724?

Answer. Yes; in the basement there. Yes; I knew them there.

Question. Now, Mr. Derrick, in what business have they been engaged during the time that you have know them?

Answer. Hooper & Klesner?

Question. Yes.

Answer. I do not know about that. The only thing I know is that they were making shades and painting and hanging paper.

Question. You have seen their place when they were located at Twelfth and H Streets, have you not?

Answer. Yes, sir.

212 Question. And would you say from the advertising matter and signs that they maintained on their building that they held themselves out as the firm of Hooper & Klesner, wall papers, painters, shades, and so forth, or as a shade shop?

Answer. I would say the former.

Question. The former?

Answer. Yes.

Question. That is, you would say that they held themselves out as the firm of Hooper & Klesner, dealers in wall papers, painters, and shades?

Answer. Certainly.

Question. Is it not a fact that probably 75 per cent of the paper hangers and painters and decorators engaged in the business similar to that which you conducted, and that conducted by Hooper & Klesner, carry as a part of their business, a window-shade business?

Answer. I would say that at least that percentage of the dealers. I do not think we could add to that, paper hangers, what we call "bucket men."

Question. I mean the business of paper hanging, painting, and window shades——

Answer. Decorating, and window shades.

Question. Then, the window shade business is somewhat of an adjunct or just one part of the business conducted by paper hangers or firms doing a paper hanging and painting and decorating business?

Answer. Well, all that I have ever had any dealings with seem to be connected up that way.

Question. Mr. Derrick, do you, from your experience, consider that the use of the words "Shade Shop" convey any different meaning to the public as to the business conducted on those premises than do the words "window shades." In other words, does a place which might advertise and be termed as a shade shop, mean anything more than a sign on the window, advertising window shades?

Answer. I would—I might make this explanation. In having calls come over the telephone, or letters coming in by mail, specifications, and things of that kind would always come to the Derrick Shade Shop. The mail would always come marked that way, "Derrick Shade Shop." The telephone would ring, and they would ask, "Is this the Derrick Shade Shop?" They would not ask if this was the Luther L. Derrick Co., notwithstanding the fact that we made shades under the Luther L. Derrick Co., and also we took orders under the Derrick Shade Shop, but after that was established, why, the orders, as I have just said, phone orders and mail, came marked, "Derrick Shade Shop."

Question. Then, it was your idea that the words "Shade Shop" convey the meaning that it is a place where shades are made up?

Answer. That is right.

Question. It is a fact that many department stores and other stores probably sell stock size window shades, do they not?

Answer. Oh, yes; and some make them to order, like Woodward & Lothrop.

Question. But the fact that a man advertises window shades does not necessarily carry with it the idea that he makes them up, unless there is something else there to indicate that he is a manufac-
213 turer of window shades. The single words "window shades" would not convey the idea to the public, necessarily, that it was a place where shades were made up and sold, but where shades may be purchased, probably in stock sizes.

Answer. I might answer that by making the statement that we often had people come in and ask for ready-made shades, and we did not carry them.

Question. That was when, Mr. Derrick?

Answer. During the life of the business.

Question. While you were at 819 Fifteenth Street?

Answer. 819 Fifteenth Street. As far as I remember, that has always been the case, practically.

Mr. AHALT. I will ask the reporter to mark for the purpose of identification this paper as Respondent's Exhibit No. 7.

(The paper referred to was thereupon marked for identification "Respondent's Exhibit No. 7, Witness Derrick.")

Question (by Mr. AHALT). Mr. Derrick, do you recall some time ago, during the year 1915, having been called upon by anyone representing Hooper & Klesner and ask to make a statement and an affidavit in connection with a suit which had been filed by W. Stokes Sammons, trading under the name of "The Shade Shop," against Hooper & Klesner?

Answer. I do not remember anything definite about it, Mr. Ahalt. You showed me a copy of an affidavit the other day. I do not remember. I do not even remember anything.

Question. I show you papers marked "Respondent's Exhibit No. 7," and ask you to read for the purpose of refreshing your mind that paper termed "supporting affidavit."

Mr. HAWKINS. What, may I ask, Mr. Ahalt, is the purpose of this affidavit?

Mr. AHALT. I think the question I propounded to Mr. Derrick last was for the purpose of refreshing his mind as to what he stated at that time.

Mr. Hawkins (after examining affidavit). As I understand, now, this supporting affidavit has only been identified. Now, what is the question, as the record stands?

(Thereupon, the reporter read the pending question.)

Mr. AHALT. I might, for the purpose of further identifying the paper that the witness is reading, refer to it as that paper following page No. 8 in this respondent's Exhibit No. 7 for identification.

Mr. HAWKINS. I now ask Mr. Ahalt if he intends to introduce this affidavit which the witness is now reading?

Mr. AHALT. You mean the original?

Mr. HAWKINS. Either the original or a certified copy.

Mr. AHALT. Yes.

Question (by Mr. AHALT). Now, Mr. Derrick, having read that affidavit, will you state whether or not you made such an affidavit?

Answer. I could not state; no, sir.

Mr. HAWKINS. I am going to object to the question because Mr. Ahalt has said that he is going to introduce the affidavit. I have read the affidavit, if it please the examiner, and it contains statements at variance with the testimony which Mr. Derrick has made here to-day on the stand.

(Prolonged argument off the record.)

214 Examiner DUNHAM. The objection is for the purpose of the record, and as I understand the witness, he said in response to your question that he had no recollection of having signed that affidavit. Is that right?

The WITNESS. I do not remember it at all. May I just add a word to that?

Examiner DUNHAM. Yes, sir; we want your exact meaning to go into the record.

The WITNESS. That is not the original. The original would, of course, have my signature on it if I signed it, and I might say this, that if the original does show that I signed it, I have no recollection that I signed it, and I do not know that I did sign it. That is my recollection now.

Question (by Mr. AHALT). Now, Mr. Derrick, assuming that this a true copy of the original affidavit, or of an original affidavit which you did sign, and which was filed in equity cause No. 33946 in the Supreme Court of the District of Columbia in a case entitled "William Stokes Sammons, plaintiff, vs. Harry S. Hooper and Alfred Klesner, Copartners, Trading as the 'Shade Shop,' defendants," the words "Shade Shop" being in quotations. Will you state whether or not at the time you made such affidavit that the facts contained in this affidavit were true?

Mr. HAWKINS. Now, just a minute. Read the question.

(Thereupon, the reporter read the pending question.)

Mr. HAWKINS. Now, that is exactly what I said a few minutes ago as to where we would get. If your honor will read the affidavit you will see very plainly what he is driving at, and he is now trying to impeach his own witness.

Examiner DUNHAM. You object to it?

Mr. HAWKINS. Why, certainly. It is absolutely ridiculous.

Examiner DUNHAM. The objection is in, and if you can, you may make such answer to the question as you can, Mr. Witness.

Mr. AHALT. I would like the record to show prior to that answer that, assuming that what counsel for the commission has said is true, that counsel for the respondent has a right, under the rules of evidence, if taken by surprise, to propound such a question to the witness.

Examiner DUNHAM. Now Mr. Witness, can you answer the question?

The WITNESS. Can I answer by making a statement?

Examiner DUNHAM. Yes, sir.

The WITNESS. As to whether the original is the copy or not, the evidence that I have just given is the facts in the case, notwithstanding anything that might have been recorded or given heretofore.

Question (by Mr. AHALT). Then, the facts contained in this affidavit, assuming that you made such an affidavit, and that this is a true copy, were not true at the time you made it?

Answer. I do not want to answer that way.

Mr. HAWKINS. I object.

The WITNESS. I want to answer that by stating that the facts that I have given before the commission this morning are the facts in the case.

215 Question (by Mr. AHALT). Mr. Derrick, I will ask you what you mean, assuming that you made such an affidavit, and that this is a true copy, by saying that the affiant further states that during the period of over three years from May 1, 1911, to about May 15, 1914, he was the sole owner of and had absolute control of the window-shade business conducted as "The Shade Shop."

Mr. HAWKINS. I object to that because it has absolutely no warrant in law. There is no warrant in law for a lawyer to take an affidavit, a certified copy of an affidavit, and then asking the witness what he meant by what he said there. The affidavit is here, and he is going to introduce it. It speaks for itself, and he can not put this witness on and ask him what he meant by it. I want my objection to show in the record, and exactly what I said about it.

Examiner DUNHAM. Read the question.

(Thereupon, the reporter read the pending question.)

Mr. HAWKINS. My further objection is that the witness has already answered the question because he said he had given the facts in the testimony here, regardless of what was in the affidavit.

Examiner DUNHAM. You may answer the question, Mr. Witness.

The WITNESS. I would interpret that to mean that so far as our arrangements were concerned, I was not the owner, and I have given those facts in my testimony this morning.

Question (by Mr. AHALT). Then, do you consider at this time, under the arrangement you had with Mr. Sammons, in connection with the business conducted under the name "The Shade Shop" during the period that the business was conducted under such arrangement that you were the sole owner and had absolute control?

Answer. So far as our contract, our mutual contract went.

Question. Mr. Derrick, is it that when you refer to contract you mean that you had no contract?

Answer. Verbal contract.

Question. That you only had a verbal contract?

Answer. Verbal contract.

Question. And that you mean, when you say under your contract, you refer only to a verbal contract. Now, did I understand you to say that under this verbal contract which you had with Mr. Sammons and the manner in which you conducted the business, that you did consider at that time, that you were the sole owner and had control of the business?

Answer. To that extent.

Question. I believe you testified, Mr. Derrick, a little while ago that you did not consider that you were the sole owner of the business. Do you now wish to correct your testimony to have it conform to your last answer?

Answer. I would like to have the stenographer read where I said that.

(Thereupon, the reporter read the preceding testimony, beginning with: "Q. Now, Mr. Derrick, will you state what control, if any, you had over this business which it was conducted at 724 11th Street after you made this arrangement with Mr. Sammons?", and ending with: "A. Yes, sir; they come billed to Luther L. Derrick Company.")

216 Mr. HAWKINS. Read the last question that Mr. Ahalt asked.

The WITNESS. That would be my answer.

Mr. AHALT. Let him read the question before the witness answers it.

Mr. HAWKINS. What was the last answer that this new one is to conform to?

(Thereupon, the reporter read the preceding testimony, beginning with "Q. Now, Mr. Derrick, assuming that this is a true copy of the original affidavit, or of an original affidavit which you did sign, and which was filed in equity cause No. 33,946 in the Supreme Court of the District of Columbia in a case entitled "William Stokes Sammons, plaintiff vs. Harry S. Hooper, and Alfred Klesner, Copartners, Trading as the 'Shade Shop,' defendants," the words "Shade Shop" being in quotations, will you state whether or not at the time you made such affidavit that the facts contained in this affidavit were true?" and ending with "A. To that extent.")

Mr. AHALT. That is the question.

Mr. HAWKINS. To what extent?

Mr. AHALT. Now, there is what I was getting at. In the answer he says that he wishes to qualify his answer to the extent of the question asked. Now, I asked him whether he wanted to qualify his oral testimony wherein he said he did not consider that he was the owner, to conform to this question just read, question and answer just read.

The WITNESS. The testimony given is my answer.

Question (by Mr. AHALT). What testimony given?

Answer. That the reporter has just read over—the agreement, and the 90 per cent profits.

Question. Do you still maintain, then, even in view of the question wherein I asked you if you wanted to qualify your statement that

you were the owner only to the extent to which you answered, and you answered to the effect that you did wish to qualify it to that extent, that you were, or were not the sole owner of the business, while the same was being conducted under the arrangement with Mr. Sammons?

Answer. Only to the extent of 90 per cent of the profits.

Mr. HAWKINS. I object.

(Prolonged argument off the record.)

Question (by Mr. AHALT). Mr. Derrick, you do not wish to qualify any of your testimony, then, except in the manner in which you did qualify it in this record?

Answer. Yes, that is right.

Question. Mr. Derrick, did you have any window shades on display on the first floor in the room in which your paper hanging and painting business was conducted, proper, at 819 Fifteenth Street?

Answer. We had a rack in the main hall of the building.

Question. Persons calling at that address for the purpose of placing orders would be directed and would place their orders where? In your storeroom, or upstairs?

Answer. With "The Shade Shop," upstairs.

Question. They would not place any orders downstairs?

Answer. If they did, Mr. Sammons came down and waited on them.

217 Question. Was it not a fact that Mrs. Scott took orders over the telephone for shades?

Answer. We had an exchange box, switchboard, right on to upstairs.

Question. She did not take any orders downstairs?

Answer. If there was no one upstairs, of course, she made a note of it.

Question. Was that telephone listed under the same telephone number that you had?

Answer. Yes, the same number.

Mr. AHALT. That is all.

Cross-examination by Mr. HAWKINS:

Now, Mr. Derrick, how long have you known Mr. Sammons?

Answer. I could not definitely state.

Question. Just broad and large, generally speaking; 10 years, 5 years, or what?

Answer. Yes, I guess I have known the old scout about 12 years.

Question. You and Mr. Sammons are good friends now, are you not?

Answer. Yes, sir.

Question. And always have been?

Answer. Always have been.

Question. You have had no trouble, have you?

Answer. No, sir.

Question. You never had any trouble with Mr. Klesner?

Answer. No, sir; I never had; always been good competitive friends.

Question. How long have you known Mr. Klesner?

Answer. I guess 12 or 15 years.

Question. Now, during the time that you have known Mr. Sammons, has he been trading under the name of "The Shade Shop" or "Shade Shop"?

Answer. I think, if my recollection serves me just right, he made a few shades for me before.

Question. I was asking you about how he traded; what trade name he used?

Answer. He used his own name.

Question. Oh, he did, at first?

Answer. Yes; W. Stokes Sammons.

Question. How long is it your recollection that he has been trading under the name of "The Shade Shop"?

Answer. I would say a year or two, probably two years, before ever we had this agreement. That is my recollection, yes, sir.

Question. Now, I think this agreement is perfectly clear and there are only one or two things that I want to ask about it. When he was on Eleventh Street before he came over to Fifteenth Street, did he not do all of your buying himself and come to you for the money?

Answer. Yes, sir.

Question. At that time was not all of his stock shipped to him C. O. D.?

Answer. Before our agreement?

Question. No, after his agreement, when he was on Eleventh Street.

218 Answer. Shipped to him C. O. D.?

Question. Yes.

Answer. No, sir; it was not.

Question. Was not there a large amount shipped to him C. O. D.?

Answer. I would not like to say about that.

Question. What is your recollection about it?

Answer. My recollection is that the orders—I bought the goods and they came marked, "The Shade Shop" and billed to me—just the agreement.

Question. Was that when he was on Eleventh Street?

Answer. Yes, that was before we came around, after we entered into this agreement.

Question. Do you ever recall his coming to you to get the money if the goods had been shipped to him C. O. D., and he had to get the cash?

Answer. Yes, sir.

Question. When that was done, or when you bought the goods on your own credit at either Eleventh Street or on Fifteenth Street, as soon as the stock was made up into shades and sold, you got the proceeds of the sale, did you not; got your money back from him?

Answer. We collected the bills; yes, sir.

Question. All the bills receivable went to you, did they not?

Answer. Yes, sir.

Question. So, if you had advanced say, $100, or $500 to him and he bought stock, and sold the shades, as soon as the bills receivable came in, that money went to you to reimburse you for the principal that you loaned him?

Answer. Yes, sir.

Question. So that you had a security, the bills receivable, did you not?

Answer. Yes, sir.

Question. And as fast as they were collected, you were reimbursed for what you had advanced?

Answer. Yes, sir.

Question. Now, when Mr. Sammons left in the early part of 1914, you did not have any disagreement at all, did you; you and Mr. Sammons?

Answer. No, sir.

Question. It was perfectly agreeable to both of you, was it not?

Answer. Yes, sir.

Question. You did not object to his going down to Twelfth and H Streets, did you?

Answer. I certainly did not.

Question. You made no objection to his taking "The Shade Shop" there, did you?

Answer. No, sir.

Question. You knew that he was going to continue in the business under the name of "The Shade Shop"?

Answer. That is what he told me. That is the only thing I knew.

Question. You did not object to it at all?

Answer. No, sir.

Question. Your nephew was there, and you scratched out "The" on the sign and painted it over and put on "Derrick Shade Shop" and your nephew went ahead?

219 Answer. Yes, sir.

Question. After he had been down there, of course, all the bills receivable belonged to you to reimburse you for what you had advanced. That was true, was it not?

Answer. Bills for work done and completed up to the time he left, of course.

Question. They belonged to you, to reimburse you?

Answer. Yes, sir.

Question. And you collected them, did you not?

Answer. Collected all that we could. Some few, I think we never collected; put it up to profit and loss.

Question. When there was a question raised by some of the customers that they did not know you in the transaction, Mr. Sammons

never refused to assign the claim to you, or tried to collect any of the bills receivable himself, did he?

Answer. No, sir; not to my recollection.

Question. Now, when he left the Fifteenth Street building, I think you told Mr. Ahalt that you sent out some kind of notices about it?

Answer. Yes, sir.

Question. What were those notices?

Answer. Notices of the change in the name of the shop, and also listed in the telephone.

Question. You were doing business as Luther L. Derrick Co.?

Answer. Yes.

Question. Was that a trade name that you used?

Answer. Just a trade name, that is all.

Question. I think you told Mr. Ahalt that you recalled that Messrs. Hooper & Klesner at one time were making shades, manufacturing them. When was that?

Answer. I think I only said that in a general way. I, of course, took it for granted that they were doing it, because they were in the shade business.

Question. They were selling shades?

Answer. Yes, sir; and advertising window shades.

Question. Do you know who made the shades that they sold; whether they made them, or somebody else made them?

Answer. Up to that time I do not; no, sir.

Question. Now, as I understand it, the only interest that you claimed or claim now, or ever did claim, was 90 per cent of the net profits?

Answer. Yes, sir. Could I made a statement there?

Question. Yes. I want the truth about it.

Answer. That might, Mr. Examiner, enter into the words of "sole ownership," being independently my own business, not having anyone in with the company, see; meaning that all profits belonged to myself personally. That might have entered into the wording there.

Question. Ninety per cent of the profits?

Answer. That is what I mean; solely to me.

Question. You never claimed to have any interest in anything else than the business, except the 90 per cent profit?

Answer. That is all.

Question. Never asserted it, did you?

Answer. No, sir.

Question. And you are not now asserting it?

220 Answer. No, sir.

Question. You never claimed to have any interest in The Shade Shop?

Answer. No, sir.

Mr. AHALT. I object to that line of testimony on the same ground as I have objected heretofore, as to whether or not he had an interest in the trade name "The Shape Shop" is a matter of conclusion.

Mr. HAWKINS. I want the record to show that the reason I am having to do that is because counsel for respondent asks him similar objectionable questions, and I can not remain silent and let the record be that way.

Mr. AHALT. Counsel for the commission not long ago stated that he was satisfied with the interpretation of the contract as explained by the witness as to what this meant, and that it would be a matter for the commission to determine.

Mr. HAWKINS. I objected to counsel for respondent going ahead, but he did so, and I have got to do the same thing and meet fire with fire. Of course, whenever you get away from the recognized principles of rules of evidence you get into trouble, and we are in trouble right now.

Question (by Mr. HAWKINS). You have said, Mr. Derrick, on several occasions, since Mr. Sammons left the Fifteenth Street building, that you did not own "The Shade Shop," have you not?

Answer. Certainly. I have said that, and of course I have always contended so, because it was so.

Question. Now, when Mr. Sammons left there—that was in what year that he left you?

Answer. May, 1914, I think. The record shows it.

Question. In the spring of 1914 when he left you, do I understand that all the bills receivable went to you, and you assumed and paid all bills payable?

Answer. Absolutely.

Question. Mr. Sammons did not pay any of that at all?

Answer. No, sir.

Question. Did you ever tell Mr. Hooper or Mr. Klesner that you owned The Shade Shop?

Answer. Not to my recollection.

Mr. HAWKINS. I think that is all I want to ask him.

Redirect examination by Mr. AHALT:

Question. Just one other question, Mr. Derrick. When you say you assumed the bills when Mr. Sammons left, you do not mean to say that you assumed the bills. You mean to convey the idea that you were primarily responsible for them, don't you?

Answer. Absolutely.

Question. Now, Mr. Derrick, how would the bills receivable and bills payable compare in amount at the time Mr. Sammons left you?

Answer. I could not say, Mr. Ahalt, now.

Question. Did you consider that the bills payable were more than the bills receivable?

Answer. I could not say. I do not have any recollection.

Question. You do not recall whether or not this was a profitable business for him, or not, the engagement you had with Mr. Sammons?

221 Answer. I do.

Question. You considered it profitable?

Answer. Profitable, because he got a profit.

Question. Mr. Derrick, do you remember telling me on the first occasion that you came down here—I think last Friday, while we were discussing this matter privately—that you were the owner of that business, and when I mentioned to you something about the bill of Mr. Henderson, which has been previously testified to here, you explained that transaction with Mr. Henderson and said that you were the owner, and that the bill was due you?

Answer. That was my bill.

Mr. HAWKINS. Just a minute. I want to object to that. Let the record show that I object to it as a further attempt to impeach his own witness.

Mr. AHALT. I asked Mr. Derrick whether he recalled having told me that he was the owner of this business and that this bill was due him, and that Sammons had nothing to do with it.

The WITNESS. Under the contract; why, certainly.

Mr. AHALT. That is all.

Recross examination by Mr. HAWKINS:

Question. Mr. Sammons never contended that money from Mr. Henderson was coming to him, did he?

Answer. No, sir.

Question. And then you placed it in the hands of Mr. Wilson, a lawyer, did you not?

Answer. Yes, sir; Andrew Wilson. I placed several in his hands. I do not know just how many. I do not know anything about the returns, because he had other business and he just simply made returns.

Question. Do you recall that it was necessary before Mr. Wilson collected the money to have Mr. Sammons write an O. K. on it?

Answer. I did not consider it necessary. As far as Mr. Wilson——

Question. I say, do you recall that he did?

Answer. No; I do not recall that, at all.

Question. There has been introduced here as Respondent's Exhibit No. 5, a paper which Mr. Henderson brought in as his receipt, and testified to, and there is an O. K. by Mr. Sammons on that receipt. Is that Mr. Sammons' writing?

Answer. Yes, that is Mr. Sammons' writing.

Question. Now, Mr. Derrick, I see, on this Respondent's Exhibit No. 5 at the top there, that this is a bill to Mr. John M. Henderson, and below that there are the words "trading as The Shade Shop, to Luther L. Derrick." Did you make a practice of holding yourself as Luther L. Derrick, trading as The Shade Shop.

Answer. No, sir.

Question. You never did, did you?

Answer. No, sir; Luther L. Derrick Co. This is on one of my old billheads here, and that probably was made out after the exhaustion of some of the Luther L. Derrick Co.'s. This is an old one here at 809 Vermont Avenue. Here it is, right here [indicating].

222 Question. Then, above, "Luther L. Derrick Company," is "Trading as The Shade Shop."

Answer. Trading as "The Shade Shop," yes.

Question. Did you ever use the name "The Shade Shop"; Luther L. Derrick trading as that?

Mr. AHALT. I object to that. He has testified that is his billhead, and the bill speaks for itself as to whether or not he traded as that.

Question (by Mr. HAWKINS). Did you ever trade under the name "The Shade Shop," Mr. Derrick?

Answer. No, sir; Luther L. Derrick Co.

Question. Now, could you tell us how it happened then, in this bill, in closing up that Henderson transaction, that it was "Trading as The Shade Shop"?

Answer. I presume that Mr. Henderson probably objected to making payment to the Luther L. Derrick Co., with the understanding that he was trading with The Shade Shop. I presumed that is the interpretation of it, and this O. K. here would infer, I should think, bear out that interpretation, that he would not pay it until it was O. K.'d.

Question. But you never held yourself out to the public as being The Shade Shop in any manner.

Answer. No, sir; I had my own name.

Redirect examination by Mr. AHALT:

Question. Mr. Derrick, as a matter of fact, did you not send out several bills when Mr. Sammons left you for the accounts receivable and due "The Shade Shop," and bills similar to this, in which you put the words "Trading as The Shade Shop"?

Answer. I might have done it. I do not remember at all. There is an indication there that it might have been necessary under the arrangements, you know, that that be put there, in order that it might be collected in the name of Luther L. Derrick Co.

Question. You wanted to convey to the persons to whom such bills might be sent that you were trading as The Shade Shop?

Answer. I was trading as Luther L. Derrick Co., controlling the contract of "The Shade Shop," such as we have entered in the testimony.

(Witness excused.)

W. STOKES SAMMONS, heretofore called as a witness on behalf of commission, was recalled and testified further as follows:

Redirect examination (continued) by Mr. HAWKINS:

Question. Now, Mr. Sammons, there are half a dozen or so questions that I want to ask you, that were brought out during your cross-examination yesterday. You spoke to Mr. Ahalt yesterday morning, in response to a question from him, saying to the effect that your opinion about the case was the same as the Federal Trade

Commission's opinion. Now, I wish you would explain what you mean by the Federal Trade Commission's opinion.

Answer. The opinion I arrived at after reading the complaint that the Federal Trade Commission sent out.

Question. Who did you get that complaint from?

223 Answer. It was sent to me by the Federal Trade Commission.

Question. Mr. Ahalt also spoke to you about the complaints of confusion growing out of the similarity of your trade name and "Shade Shop," trade name of the respondent, at your present place of business on Thirteenth Street. You said something to him about it being chiefly about the telephone, I wish you would tell me a little more fully what you meant by that?

Mr. AHALT. Before that question is answered, I want to enter an objection on the ground that there has been no testimony in this case that respondent uses as a trade name, as the question is worded, "Shade Shop," as a trade name.

Question (by Mr. HAWKINS). Now, will you answer the question?

Answer. I had several complaints from people calling up that they had been confused in the words "Shade Shop," as the telephone book had "Shade Shop, 12th and H Street"—and "Shade Shop," either 12th or on H Street—what the address was I do not know.

Question. How frequent were the complaints?

Answer. Well, in a period of about four months, at least a dozen. One lady came in and said that how she got the right place was after she did not know where The Shade Shop was, she asked information.

Mr. AHALT. I object to this witness testifying to that on the ground that it is strictly hearsay as to what the customer told him.

The WITNESS. She said she called up information, and information directed her to the original shade shop, as that was orders from the manager—after I had lodged complaint, they had left off "The" in the new issue of the book, and I complained against it.

Question (by Mr. HAWKINS). And you have had similar complaints about that?

Answer. As I said, Mr. Hawkins, I have had numerous complaints.

Question. Yesterday, in your cross-examination, Mr. Ahalt, as I recall, showed you Commission's Exhibit Nos. 14 and 56, and asked you if there was any material difference, change, in these letterheads or billheads, and you replied, as I recall it, "No." I notice that in Commission's Exhibit No. 56, which is a billhead, that you were styled in that as "W Stokes Sammons, Proprietor." In Commission's Exhibit No. 14 you were styled "W. Stokes Sammons, Manager," so that there is a change or difference. I wish you would explain that.

Answer. Mr. Ahalt asked me the material difference. I thought maybe in the correct way I wrote the billhead up, and the colors and all. Now, in regards to the reason why I put "proprietor" and "manager," when I was at 819 Fifteenth Street, and all years previous to that, I never had any credit rating. In fact, I did not know who

The Shade Shop belonged to in the credit rating, and W. Stokes Sammons never had no credit rating. The Shade Shop had no credit rating. After I started to go into business for myself at Twelfth and H Street, I had saved a few dollars and owned an automobile, and I applied for credit rating to the jobbers and manufacturers of window shades under the trade name as "The Shade Shop." I asked for credit at bank where I had bank accounts under the name "The Shade Shop," and they asked me who was the proprietor of The Shade Shop, and I says, "I am." They said—

224 they did allow me a small loan of credit, possibly $50 or $100, three of the firms did. My bank gave me a small line of credit, possibly two or three hundred dollars. It was on their suggestion and it was on their say that I should style my business as "The Shade Shop," that I should inform the public that I was the proprietor, and also should have in writing, or some kind of document, where I kept that, that I was proprietor of The Shade Shop, in case they should make suit against me for nonpayment, that they could sue me as "The Shade Shop, W. Stokes Sammons, Proprietor."

Question. When you were there at the corner of Twelfth and H Streets with Hooper & Klesner, and a transient customer came in, what was the practice of the clerks there, with reference to what they were to do?

Answer. We would never be up in front. We would always be in the rear, and whoever waited on the customer would always holler, "The Shade Shop." That is all; we knew what they meant.

Question. When they hollered "The Shade Shop," what did you do?

Answer. We would come out and interview the customer.

Question. Now, at the time you left the corner of Twelfth and H Street, and breached you lease, that you have told about, did Messrs. Hooper & Klesner make any objection to your breaching the lease?

Answer. They did not.

Question. Did they then, or have they at any time since then made any claim upon you for rent or damages growing out of the breach of the lease?

Answer. Not in writing or verbally.

Question. You told Mr. Ahalt yesterday when he was questioning you on this point, that they were tickled to death; as I recall it, Mr. Ahalt asked you what they said, and you said they were tickled to death. What did you mean by "tickled to death"?

Answer. I had leased that building and notified my customers, and had a new truck "733 Twelfth Street," on it, at least, I am positive three months previous to going to 733 Twelfth Street. They knew that I was going. They never tried to hold any merchandise for breach of contract, and they were very glad I was going.

Question. You say they were very glad. How do you know they were glad?

Answer. Well, this storeroom was about——

Question. What did they say about it?

Answer. I want to explain. This storeroom was about 20 feet deep and 60 feet long—that is, lengthwise on Twelfth Street, 60 feet. We had a very small portion back there; they had a very small portion up to the front. They did not have room to conduct their business. Their business was growing, and we had sewing machines and hammers and saws, and they would always be complaining of the noise, when the telephone was ringing they would have to holler back, "Stop that sewing machine; stop that hammer:" People come in, and they could not hardly hear the customers, and they were always complaining, and when they knew I was going, they told me they were glad I was going. They said there was too much noise in the place.

225 Question. In your cross-examination by Mr. Ahalt yesterday, you were shown Commission's Exhibit 45, and in order to get the record clear, I think I said something into the record; pretended to have you say it. I want to ask you if what I said to you was my understanding was correct, for the purpose of making the record straight? This Commission's Exhibit No. 45, that you yesterday was a billhead; is that correct?

Answer. Yes, sir.

Question. I will ask you if you saw the original letter?

Answer. I did.

Question. I will ask you to say if you saw the signature?

Answer. I did.

Question. Whose signature was it?

Answer. It was Hooper & Klesner's, typewritten with a name under it. I can not recall which name was under it.

Question. And that letter was shown to you by whom?

Answer. By Weaver Bros.

Question. How did you come into possession of this letterhead that has been marked Commission's Exhibit No. 45?

Answer. I told them that I would like to have it to use it as an exhibit to submit to the Federal Trade Commission, and they granted me that.

Question. Now, this Commission's Exhibit 45, which is the letter which you have described and told us how you got it, all the circumstances—I note under the picture of the store, the words, "Manufacturers of Window Shades." During the period that you were occupying the premises at Twelfth and H Streets with Messrs. Hooper & Klesner, did they have on their letterheads or billheads, "Manufacturers of Window Shades"?

Answer. They did not.

Question. Mr. Ahalt asked you some questions yesterday about the gross amount of your business in dollars and cents for the last few years. As I recall it, and if I am wrong, I wish you would

correct me; you told him that some time ago you were doing a gross business of something like $30,000?

Answer. Yes, sir.

Question. When was it you did that gross business of about $30,000.

Answer. When I was at the corner of Twelfth and H Streets, between $30,000 and $40,000; possibly $35,000.

Question. What year was that?

Answer. 1914, 1915—that is, when I was in that business at the corner.

Question. I think you told him that last year you did a gross business of $60,000 or $70,000?

Answer. $75,000 to $80,000.

Question. Now, of course that gross is in dollars and cents. Has there been, during that period of time, any increase in the price of shades, their retail price?

Answer. 300 per cent. Where I sold a shade on the corner of Twelfth and H Streets for 50 cents, I am now forced to sell the shade in the last two years for $1.50—200 per cent, I mean.

Question. Shades, like everything else, have gone up in the last five or six years?

226 Answer. Shades, and everything else.

Question. Mr. Ahalt yesterday qualified you as an expert, and asked you numerous questions as to your opinion as to the effect of the name "The Shade Shop," and "Shade Shop" upon the purchasing public, and what these trade names would mean or what they would convey to the public. I will ask you now if a man by the name of W. Stokes Sammons had been engaged in the exclusive manufacture and selling of window shades in the city of Washington, D. C., for 15 years last past under the trade name of "The Shade Shop"; if, during that period of time, he had advertised extensively in the daily press and magazines and in programs and had used this trade name on his letterheads and on his billheads; carried bank accounts in that name, and borrowed money under that name; signed his checks under that name, and has built up a trade, and had held himself up to the trade and purchasing public, and the general public in the District of Columbia as "The Shade Shop"; what, in your opinion, under these circumstances, would the trade name "The Shade Shop" convey to the purchasing public?

Mr. AHALT. Before that question is answered, I want to enter an objection to such a hypothetical question on several grounds, namely, that there is no testimony here, as I recall the question, which shows that W. Stokes Sammons has traded and banked and conducted the business, as outlined in the question, exclusively under the name of "The Shade Shop," as proprietor, and that the question contains several inquiries, and calls for several answers that can hardly be answered in one response.

Examiner DUNHAM. You may answer, now; the objection is in.

The WITNESS. I would say that the name "The Shade Shop" through my numerous efforts to convey to the public, through ad-

vertising, solicitation, billheads, windows, and such as that, and the thousands of dollars I have spent in advertising, in the last 15 years, "The Shade Shop" as a trade name for my business, that the public would know, and does know that "The Shade Shop" is an exclusive manufacturer of window shades and that it is a trade name.

Question. A trade name for whom?

Answer. For me, W. Stokes Sammons.

(Discussion off the record.)

Mr. AHALT. I would like to have the latter part of that question read, to ascertain whether or not it contains "Shade Shop" or "The Shade Shop."

(Thereupon, the reporter read the last part of the question as follows:)

"* * * and had built up a trade and had held himself out to the trade and purchasing public and the general public in the District of Columbia as 'The Shade Shop'; what, in your opinion, under these circumstances, would the trade name 'The Shade Shop' convey to the purchasing public?"

Question (by Mr. HAWKINS). If, under these circumstances, a competitor of the said W. Stokes Sammons, should proceed to engaged in the manufacture and sale of window shades and use the name "Shade Shop" in connection with his business, what, in your opinion, would be the effect of that upon the public?

227 Mr. AHALT. Before that question is answered, I want to see whether the report will show whether it is "The Shade Shop."

(Thereupon, the reporter read the pending question.)

Mr. AHALT. I object to that question on the ground that it calls for a conclusion that this witness is not competent to testify to.

Mr. HAWKINS. I want the record to show that the only reason I am offering it is that I am compelled to do so on account of Mr. Ahalt questioning the witness yesterday in a similar matter over my very strenuous objection, and inasmuch as it has gone into the record, it is necessary for me to pursue the same line of inquiry.

Mr. AHALT. I want to invite the commission's attention to the fact that this question is propounded as a hypothetical question rather than a question of personal opinion of this particular witness.

Mr. HAWKINS. Yes; because he was qualified and Mr. Ahalt said he was an expert, if there ever was one.

Examiner DUNHAM. You may answer the question, Mr. Witness.

The WITNESS. If any of my competitors——

Question (by Mr. HAWKINS). Do you understand what the question is?

Answer. I absolutely do. If any of my competitors knowingly, knowing that there was such a firm as "The Shade Shop," and had been in business and advertised, would open a place and call it "Shade Shop" they would be deceiving the public——

Question. The question was, What would be the effect upon the public?

Answer. The public would not know which was which.

Recross-examination by Mr. AHALT:

Question. Mr. Sammons, in your last answer, there, I believe you stated that if a competitor of yours opened up a place and used the words "Shade Shop," that it would be to mislead and deceive the public. I want to ask you whether or not you mean by that answer that if they used just the words "Shade Shope" on their place of business, without using their name, or any other advertising matter as to their lines of business, in which they might be engaged?

Answer. It would not make any difference whether or not they had other signs on the windows. Just like the telephone book, they might be engaged in the wall-paper business and their name would be in the wall-paper department, but in the window-shade business, their name would be in the window-shade department, and they would be listed in the window-shade department and in the wall-paper department, and anybody that would call would see the name, "Shade Shop," and it would be confusing.

Question. Then the confusion would take place by reason of the fact that "Shade Shop" was listed in the telephone directory, and not from the words "Shade Shop" on the windows?

Answer. I said—on the windows, either one. I just made that as another example.

Question. Then, if any firm engaged in the hardware business, grocery business, dry goods business, or any other business, with their name shown on the premises, and they also maintained
228 among these other names describing the character of their business the words "Shade Shop," you would consider that that would be deceiving, and be misleading to the public, as being a shade shop conducted on the premises rather than a firm engaged in other business, and carrying on a shade-shop business as an adjunct or part of their business?

Answer. I would.

Question. Now, Mr. Sammons, you referred in your redirect examination to the telephone directory carrying the words "Shade Shop, 12th and H Streets," and stated that that was the basis of some complaints to you?

Answer. What was that, Mr. Ahalt? Read that question.

(Thereupon the reporter read the pending question.)

The WITNESS. After I said Twelfth and H Streets or on whatever number they had on the telephone book.

Question (by Mr. AHALT). Do you refer to the last issue of the telephone directory as being the director that carries that name and address?

Answer. Every directory since they have been engaged in the business under the name "Shade Shop" has carried that caption.

Question. Do you mean to testify that every telephone directory since you left Twelfth and H Streets has carried just the words in the listing in the telephone directory, "Shade Shop, 12th and H Streets"?

Answer. In the back part of the book, where they give the classified listing of window shades. That is the only thing they ever had in that book—"Shade Shop, Southeast Corner of 12th and H Streets," or "Shade Shop, 12th and H Streets, Northwest."

Question. You are positive they did not have "Shade Shop, Hooper & Klesner, 12th and H Streets"?

Answer. I am most positive they had "Shade Shope, Hooper & Klesner" in their listing in the front part of the book, but in the classified listing for firms under manufacturers of window shades they had "Shade Shop" only.

Question. What did you carry in this classified department of the telephone directory as descriptive of your place of business?

Answer. "The Shade Shop" beneath. There is a reason why. It is because "The" comes after "S."

Question. Then you did not have "The Shade Shop, W. Stokes Sammons, proprietor," or "manager," or "W. Stokes Sammons"?

Answer. Mr. Ahalt, I answered that question correctly. In another department of the advertising, under a separate business, and all, I paid for, inserted an advertisement, in that department, which was written by Mr. Archibald, of the Evening Star, "The Shade Shop, W. Stokes Sammons, Proprietor, Exclusive Manufacturers of Window Shades, 733 12th Street, Main 4874."

Question. What was their carried in the main part of the telephone director descriptive of your place of business?

Answer. "The Shade Shop." They had left off in some of their issues the "W" and put "S." They put "The Shade Shop, S. S. Sammons."

Question. Did they ever put "W. S. Sammons"?

229 Answer. They left it off sometimes. They corrected their mistake and made it "W. S. Sammons," I am positive.

Question. Then, there was coupled with the name "The Shade Shop," "W. Stokes Sammons" to identify you?

Answer. In the back. There was one main listing in the book.

Question. Now, the only telephone directory that has omitted the words "The" on "Shade Shop" and the words "W. S. Sammons," in the main listing, which has been published since you left Twelfth and H Streets, is that known as the fall issue, and made a part of Commission's Exhibit No. 11, is it not, which exhibit I now show you?

Answer. Read that question over again, will you?

(Thereupon, the reporter read the pending question.)

The Witness. That is true, and it will be impossible—the telephone company, on their new way of publishing a book, as Mr. Hunt explained to you, it will be impossible—it was the best they could do, was to put "The" after "Shade Shop." They will not put my name there.

Question (by Mr. Ahalt). It was through no direction or fault of yours that this change was made, then, in this Fall issue of the telephone directory, a part of which is Commission's Exhibit No.

11, wherein they drop the word "The," or the words "W. S. Sammons"?

Answer. The general public did not know anything about it.

Question. I asked you the——

Answer. I ask you the question.

Mr. AHALT. Read the question, please, Mr. Reporter.

(Thereupon, the reporter read the pending question.)

The WITNESS. I will have to make a few remarks.

Question (by Mr. AHALT). Can not you state whether or not it was through your fault or direction——

Answer. I will answer your question as you want it.

Question. Can you state whether or not——

Answer. To be certain, I can state it. I did not authorize them. The general public did not know anything about the directory until it came about. They had hundreds of complaints. They will not give me "W. S. Sammons." It was after strenuous complaints to the manager and assistant manager that they allowed "The" to go into the next issue.

Question. Then this listing of your name "Shade Shop," as it appears on Commission's Exhibit No. 11, so far as the same pertains to your business, will be corrected in the next issue of the telephone directory?

Answer. They will only put "The" there, that is all. There will be no distinction to the general public which is my firm—my name will not appear.

Question. I believe you testified, Mr. Sammons, that most of the confusion was due to the fact that "Shade Shop" was listed twice, without the word "The" to distinguish your business as it appears in the telephone directory, and on Commission's Exhibit No. 11. Is that correct?

Answer. That is not correct, entirely.

Question. Then, if you did testify to that, do you wish to correct that statement?

230 Answer. My original testimony is correct. You asked me another question that requires an answer to it. In the back part of the book they have not dropped "The" at all; that is, in the classified directory.

Question. I am referring to the main listing.

Answer. You did ask if there were two listings, and I am using the one——

Question. I am referring particularly to the main listing in the body of the telephone directory.

Answer. Mr. Ahalt, there are 60 per cent of the business—50 per cent of the business people, that look into the telephone book that will look into the classified part of the telephone book before they will look in the main listing.

Question. Then, you do not attach any particular advantage to the fact that you are listed in the main part of the directory as "The Shade Shop" or "Shade Shop"?

Answer. In the main part in the new issue that comes out it will be "Shade Shop." Mr. Klesner's address and "Shade Shop" my address. In the classified part it will be "Shade Shop," unless Mr. Klesner has authorized them to do different, which Mr. Hunt said he had not, and it will be "Shade Shop" and his present address. Beneath that will be "The Shade Shop," and my address.

Question. Which one of the firm told you that they were glad you were going to leave Twelfth and H Street?

Answer. They both told me.

Question. Both of them told you?

Answer. Yes, sir.

Question. You are positive of that?

Answer. Very positive. They never demanded me to stay.

Question. When did you get this letter from Weaver Bros. that you speak of, refer to as Commission's Exhibit No. 45?

Answer. I got it this time last year; a little before.

Question. What date did that letter bear?

Answer. I did not notice the date very much; they had the original. I could have Mr. Hawkins subpoena three or four people that were there when they cut it off, if he cares to do it.

Question. Who was this lady you spoke of who told you that the only way she got the correct place, or your place, was by telephoning to the bureau of information of the telephone company, or something to that effect?

Answer. The lady was referred to my place. She looked in the telephone book, and she saw two listings, "Shade Shop."

Question. I asked you who she was. I did not ask you what she did.

Answer. I did not get the lady's name.

Question. When was this, Mr. Sammons?

Answer. It was about the first part of—about the middle of February.

Question. Of this year?

Answer. This year.

Question. Did you consider that such testimony would be relevant and good testimony for this proceeding?

Answer. I did.

231 Mr. HAWKINS. I want to object to that.

Question (by Mr. AHALT). You did not take that lady's name?

Answer. It was my impression the Federal Trade Commission had that case——

Mr. HAWKINS. That is not an answer.

Question (by Mr. AHALT). I asked you if you took the lady's name.

Answer. I did not.

Question. Mr. Sammons, my recollection of your testimony when I asked you as to the amount of business you did for the calendar

year of 1915, when you were with Hooper & Klesner—I think I referred to it as the calendar year—is that you testified that the volume of business done was about $60,000?

Answer. No, I did not. I says $60,000 the first two or three years. After I was in my business about three years; after I was in my 733 Twelth Street place, it jumped to about $60,000, then, it amounted to $60,000, $65,000, and $70,000, right straight on. The last year it was about $75,000.

Question. You are positive that, in round figures, it was $30,000, the volume of business the last year that you were at Twelfth and H Streets?

Answer. Yes, sir.

Question. Since that time, it has jumped to $60,000, $75,000, or $80,000?

Answer. It has.

Mr. AHALT. I think that is all.

Mr. HAWKINS. That is all I want to ask him. The commission will rest.

Examiner DUNHAM. Gentlemen, we will take a recess until 2 o'clock.

(Thereupon, at 12.40 o'clock p. m., a recess was taken until 2.00 o'clock p. m.)

AFTER RECESS

The hearing was resumed at 2 o'clock p. m., pursuant to the taking of recess.

Examiner DUNHAM. Are you ready to proceed, gentlemen?

Mr. AHALT. Yes, sir. I will call Mr. Appleby as a witness.

CHARLES A. APPLEBY was called as a witness on behalf of the respondent and, after being first duly sworn, testified as follows:

Direct examination by Mr. AHALT:

Question. Mr. Appleby, state your full name and occupation, please, sir.

Answer. Charles Albert Appleby; real estate, loans, insurance, and accounting.

Question. Mr. Appleby, in the year 1915 what was your occupation?

Answer. Assistant to George J. Johnson in all of these same lines.

Question. George J. Johnson was engaged in that?

Answer. The same lines with the exception of accounting. He was hardly an accountant.

232 Question. Did you have, in connection with your business and under your control, department houses and other rental properties?

Answer. Yes, sir.

Question. Name some of them.

Answer. Farragut Apartment is the biggest house I have. That is the biggest apartment that I have. I have other small properties.

Question. Will you state whether or not during the latter part of 1915 or the early part of 1916 you received a letter from "The Shade Shop" in connection with a solicitation for business?

Answer. In the early part of 1916 I did receive a letter from "The Shade Shop."

Question. Do you have that letter at the present time?

Answer. No, sir.

Question. What did you do with it?

Answer. I read the thing over, and, being a friend of Hooper & Klesner's, I turned it over to them to know why.

Question. Now, Mr. Appleby, how long prior to that time, or, I will first ask you whether or not prior to that time you had had any occasion to do business with Hooper & Klesner?

Answer. We have been doing business with Hooper & Klesner—my record is right here, and I can give you the exact date if you want it—from about August, 1904, we gave Hooper & Klesner—Harry S. Hooper, the first shade order. I notice on my records in going back, it was August, I think, the 14th, or somewhere in August, 1904. That is the first shade order I had with Hooper, and right along after that more and more until eventually Hooper & Klesner came to get all of our work in shades.

Question. Have you, in the past, given shade work to Hooper & Klesner without asking for competitive bids?

Answer. Yes. I do not know whether I have ever asked them for a price on shades in my life.

Question. In what business is the firm of Hooper & Klesner engaged, and in what business were they engaged during 1914 and 1915?

Answer. Why, painting and papering and decorating. That includes inside painting and outside painting, and wall-papering work, and shades, that is, they done for us.

Question. Did they make up shades, or did you place orders with them for shades to be measured and cut and hung?

Answer. Yes, sir.

Question. Do you recall the time when they were located at Twelfth and H Streets, and Mr. Sammons or anyone else was connected there, conducting The Shade Shop?

Answer. I have known them to be at Twelfth, the southeast corner of Twelfth and H, Hooper & Klesner, when I first went there.

Question. Did you have any knowledge of the fact that a business was being conducted there by Mr. Sammons under the name of "The Shade Shop"?

Answer. No, sir. You mean with Hooper & Klesner?

Question. Yes.

Answer. No, sir.

Question. At Twelfth and H Streets?

Answer. No, sir.

233 Question. What were the contents of this letter; do you recall?

Mr. HAWKINS. I am going to object to that for the reason that the letter is the best evidence, if it is in existence.

Mr. AHALT. I will show later, by a later witness, that this letter is in existence.

The WITNESS. The contents of the letter were a proposition offering their services as shade experts, The Shade Shop, at—I hardly know how I might put it; they would do the work for a great saving, and wanted to have a chance at our business. That was the substance of the letter. The letter did not state in detail any specific price on shades, but merely that they could give us shade work cheaper.

Question (by Mr. AHALT). Are you positive, Mr. Appleby, that the letter did not quote prices, or is not that your present recollection?

Answer. I do not believe it quoted prices. It is not my recollection; no, sir. The substance of it was that it was to be a reduction in prices, and that it would make us a big saving.

Question. Why did you turn it over to Hooper & Klesner?

Answer. For the reason that if somebody else could do it cheaper, why can't my people do it cheaper—if possible, get a reduction from them?

Question. Now, do you recall, or do your records show that during the years 1914 and 1915, that shades were purchased by you from the firm of Hooper & Klesner?

Answer. Yes, sir; every month.

Question. Have you ever observed at 733 Twelfth Street an establishment under the name of "The Shade Shop"?

Answer. Yes, sir; several times. That was just south of Hooper & Klesner's shop.

Question. Do you recall what lettering or signs of any kind pertaining to "Shade Shop," or "Shade Business," were on the building occupied by Hooper & Klesner at Twelfth and H Streets?

Answer. I remember something about shades. I remember the name "W. Stokes Sammons." I think it was "W. Stokes Sammons."

Question. I am now referring to the Twelfth and H Streets property occupied by Hooper & Klesner.

Answer. Oh, they have "Shade Shop" on the windows.

Question. They still do your window shade business, Mr. Appleby?

Answer. Yes, sir; all of it.

Question. You found their prices satisfactory?

Answer. Absolutely. I have compared other prices on the side, with theirs, other qualities, and I found their prices entirely satisfactory.

Question. What explanation was given you by Mr. Klesner, or the firm, when you turned this letter over to them and asked them how this firm could do work at such a saving, The Shade Shop?

Mr. HAWKINS. I object to that. It is purely hearsay.

Examiner DUNHAM. You may answer the question.

The WITNESS. I can not recall, offhand, exactly what they did say.

234 Question (by Mr. AHALT). They satisfied you?

Answer. I was just coming to that point. They satisfied me they would give me the best value I could get for the money. I have had every faith in both Mr. Hooper and Mr. Klesner, and I have known them, personally. I could not recall, to save my neck.

Question. Had you ever had any previous dealings with Mr. Sammons, or The Shade Shop, prior to the time you received this letter?

Answer. No, sir; never heard of them.

Mr. AHALT. That is all.

Cross-examination by Mr. HAWKINS:

Question. Mr. Appleby, this letter that you received was a letter asking you for your business, from The Shade Shop?

Answer. Yes, sir.

Question. How was it signed?

Answer. Why, I do not know. It was, "W. Stokes Sammons," or "Sammons" was the last name. I do not recall just how it was signed; it was "W. Stokes Sammons," or "Sammons," or "W. S. Sammons," for instance.

Question. Was there anything else to the signature besides, "W. Stokes Sammons," or "Sammons"?

Answer. I can not say that; whether there was or not.

Question. What is your best recollection?

Answer. My recollection is the thing that impressed me, impressed my mind, was this, that it came from this shop, this "W. Stokes Sammons," as I learned to know him, and the mere matter of the letter that is clear in my mind is that it was from this man. The full details in the matter, or the exact signature, or even the letter-head at the top are not entirely clear to me, although I know—I am willing to swear that the letter came, and all of that.

Question. To refresh your recollection, I will ask you if it was not signed, "The Shade Shop, by W. Stokes Sammons, Proprietor"?

Answer. That don't help me a bit. It may have been. I take it for granted it was, because I have known them to be in business as "The Shade Shop."

Question. How long have you known Mr. Sammons to be in business as "The Shade Shop"?

Answer. That letter came in the early part of 1916.

Question. Did you ever know, previous to that, of Mr. Sammons being in business as "The Shade Shop"?

Answer. No, sir.

Question. Is that the first time you ever heard of The Shade Shop?

Answer. It is the first time that I ever heard of Mr. Sammons, or The Shade Shop.

Question. They were soliciting the business of the Farragut Apartment, and wanted to sell you shades?

Answer. The Farragut, through its agent.

Question. Was this letter signed on the typewriter, or in longhand.

Answer. It was in hand.

Question. It was in longhand, was it?

Answer. Yes, sir.

235 Question. Do you recall the letterhead?

Answer. No, I can not say that I do.

Question. Was there a letterhead?

Answer. Yes, there was a letterhead at the top of it.

Question. I hand you commission's Exhibit No. 56, which is a billhead, and ask you if it was similar to that letterhead on this letter. Does that refresh your recolection at all?

Answer. No; I can not say that it does. I have never seen their billhead, and whether this is the same as the letterhead, I do not know. I could not say.

Question. Now, you said Messrs. Hooper & Klesner had always done your work there for all your clients?

Answer. Yes.

Question. You placed the orders for the window shades with Hooper & Klesner?

Answer. Yes, sir.

Question. You did not know who manufactured them, did you?

Answer. No, sir.

Question. Do you know whether Hooper & Klesner sublet the contract; had somebody else manufacture them?

Answer. No, sir; I do not know it yet.

Question. And you never did know?

Answer. No.

Question. It could be a fact that Messrs. Hooper and Klesner had turned it over to Mr. Sammons, and Mr. Sammons had made the shades for the Farragut Apartments on numerous occasions, and had rendered Messrs. Hooper & Klesner a bill for having made and installed the shades? You did not know that?

Answer. No.

Question. You thought that you were always dealing with Messrs. Hooper & Klesner?

Answer. Yes, sir.

Question. In fact, you were. That is the only dealer you had?

Answer. There was no question about that.

Question. You were not dealing with anybody else?

Answer. I was dealing with them.

Question. I think you told Mr. Ahalt that you had investigated other proposals, numerous proposals or offers of business from vari-

ous concerns, and always found Messrs. Hooper & Klesner satisfactory, or the best?

Answer. I have.

Question. How often have you received proposals for window shades from concerns other than Hooper & Klesner?

Answer. That would be a hard thing to say. I get an awful lot of circulars from people whom I would consider. I would have said a half a dozen.

Question. Well, the point is that it is not an uncommon thing to have people soliciting your shade trade, is it?

Answer. You get circulars—I get circulars, you might say, every month or so; open circulars.

Question. From various concerns around town?

Answer. Yes, sir.

Question. When you received his letter, did you think there was anything extraordinary about that?

236 Answer. Yes.

Question. Why?

Answer. That is the reason I turned it over to Hooper & Klesner, because it led me to believe that I would get some cut in my prices.

Question. Did they mention any price in that letter?

Answer. No.

Question. What was there in the letter that led you to believe that you would get a cut price from Hooper & Klesner?

Answer. The substance of the letter was that they co make me a considerable saving in the cost of my shades.

Question. Of course, you wanted to see if you could get a cheaper price, and so you took the letter to Hooper & Klesner?

Answer. We deal with a man, and if somebody comes along and offers something cheaper, I give that man a chance first. Otherwise, I get somebody else.

Question. For the other work that was done at the Farragut Apartments and these other apartments, for instance, paper hanging, decorating, painting, and that sort of work, is it not a common practice among the paper hangers, and decorators, and painters, to solicit the trade by letters, or circulars?

Answer. Yes; I get a few.

Mr. HAWKINS. That is all.

Redirect examination by Mr. AHALT:

Question. Mr. Appleby, when you say that this letter did not contain any figures, that is based on your recollection?

Answer. Yes, sir.

Question. It might have contained figures which caused you to consider it so unusual?

Answer. It might have been in detail for half a dozen sizes of shades. The clear recollection that I have is that it was not specified. That is the reason it led me to believe I could make a considerable saving in the cost of my shade work.

Question. It might have contained the figures themselves?

Answer. It might have contained a figure.

Question. Mr. Appleby, from what you have observed on the building at 733 Twelfth Street, we will say, the name "The Shade Shop," and from the signs that you have observed on the building at Twelfth and H Streets, we will say that they were "Hooper & Klesner, Paperhangers, Decorators, Painters, Window Shades, And Shade Shop," do you consider that, to you, there was such a similarity of names as to confuse you?

Answer. By no means.

Mr. AHALT. That is all.

Recross-examination by Mr. HAWKINS:

Question. Could not confuse you as to who Hooper & Klesner were, because you had been dealing with them?

Answer. I knew them pretty well.

Mr. HAWKINS. That is all.

Mr. AHALT. That is all.

(Witness excused.)

237 RUSSELL B. KING was called as a witness on behalf of the respondent, and after having been first duly sworn, testified as follows:

Direct examination by Mr. AHALT:

Question. Mr. King, tell your full name and occupation.

Answer. Russell B. King, rental manager, Sansbury Company, real estate firm.

Question. Do you know the firm of Hooper & Klesner, Mr. King?

Answer. Yes, sir.

Question. In what business are they engaged, Mr. King?

Answer. Paper hanging and decorating.

Question. Do they do any other business besides that, to your knowledge?

Answer. Why, not to my knowledge. Whatever they do, I do not know.

Question. Do you know of a firm, or a business that is making window shades here in the District of Columbia under the name, "The Shade Shop"?

Answer. Yes; I know of a concern of that name.

Question. Did you have occasion to telephone them, or to have them bid on work for shades?

Answer. I have requested them to give me estimates on work, but I have never been successful in obtaining them.

Question. By telephone?

Answer. Yes, sir.

Question. Did you have any difficulty in finding their name in the telephone directory?

Answer. No, no.

Question. Did any of these occasions to which you have referred as having called them on the telephone occur since 1915?

Answer. Yes.

Question. Does your firm of Sansbury Company have any dealings with Hooper & Klesner?

Answer. Yes, sir.

Question. What work do they perform for that firm?

Answer. They are doing some papering now for them.

Question. Do they do all the work for the Sansbury Company?

Answer. No; they do not do an exclusive line. They do odd jobs now and then; papering.

Question. Your office, I believe, is located at 721 Thirteenth Street?

Answer. Yes, sir.

Question. You had occasion to be in the vicinity of Twelfth and H Street, 733 Twelfth Street?

Answer. I handle practically all the adjoining property around there as manager; a good majority of it.

Question. Who does your shade work?

Answer. Mr. Reinhart.

Question. Where is he located?

Answer. 1405 Park Road.

Question. Does he make up and fit and hang shades?

Answer. He hangs and fits shades. Whether he makes them—I have seen him make shades.

238 Question. You have been in his place of business, have you?

Answer. Yes, sir.

Question. You just give the orders for shades for certain windows, and he goes and makes them up?

Answer. First he makes—generally we ask an estimate, unless it is an awfully small job, and then we give him an order over the phone to do the work, and then if the estimate is satisfactory, or if it is a small job, he just goes ahead and makes the shades. I did that this morning.

Question. Have you had any occasion to give any orders to The Shade Shop for window shades?

Answer. No. As I said before, at various times during The Home Life Building and District National Bank Building, various times I have called Mr. Sammons on the phone. I do not think I have got him. I think I got some employees in his charge. I think if Mr. Sammons knew it, he would have investigated it, but I never got any satisfaction out of them at all.

Question. Then, The Shade Shop has not been doing any business for you?

Answer. Not for me, for that reason. They have never given me any consideration.

Question. How many apartment houses and office buildings would you say, roughly, that the firm of Sansbury Co. handles?

Answer. Roughly, I should say about 40, all together, of both classes, business property and office buildings, apartment houses.

Question. Was there anything in the way of signs on the building at Twelfth and H Streets, occupied by Hooper & Klesner, and the signs on 733 Twelfth Street, The Shade Shop, which had any tendency to confuse in your mind the two places, Mr. King?

Answer. No; because I knew both firms pretty well and what their respective specialties were.

Question. At the time you telephoned to The Shade Shop, or looked it up in the directory for the purpose of calling The Shade Shop, did you have any confusion or trouble in finding The Shade Shop?

Answer. No.

Mr. AHALT. I think that is all.

Cross-examination by Mr. HAWKINS:

Question. You never had occasion, though, to buy shades from Hooper & Klesner?

Answer. I have never bought any shades from Hooper & Klesner, because I did not think they did a shade business. In fact, I really now do not know that they do a shade business. I thought, possibly, if they did it they would tell us. With Sammons, or somebody who does make a specialty of it, they would probably get their shades from them and then add their commission to it; add it onto the price of the shades, and I could go to The Shade Shop and get it much cheaper than by giving it to Hooper & Klesner, because I know that business. I do not know how a layman would take it, but I know that business.

Question. Now, Mr. King, do you find it in your experience in handling these properties that it is customary among the various shade dealers to submit estimates or bids?

239 Answer. Yes, sir.

Question. Do you find that it is customary for them to send circulars or letters to you asking for your business without your requesting them to do it?

Answer. I have never received them.

Question. Never have?

Answer. No; and we receive a lot of circulars in that way, but I have never received any circulars in reference to the shade business.

Question. Never have on shades?

Answer. No. The only thing, I will say this—I will supplement that. Day before yesterday a man came in with his business card—I can not remember the name now—it was left on my desk, and it had something in reference to shades on it.

Question. Is that the only instance you recall of anybody soliciting your business?

Answer. Yes; in fact, I really know that there was no need for soliciting business in the last two years, in my opinion.

Question. Your firm is now erecting a large office building in Washington, is it not?

Answer. Yes, sir.
Question. Where is that building located?
Answer. 1418 I Street.
Question. What is the name of the building?
Answer. The building has not been named. It has no name.
Question. Can you tell whether or not Mr. Sammons has the contract for furnishing the shades for that building?
Answer. I do not know.
Question. Can you tell us why it is that you can not say?
Answer. Because the whole buying and building of the building is directly under the head of the executives of the firm.
Question. So it might be that Mr. Sammons has the contract and you would not know it?
Answer. It might be.
Mr. HAWKINS. That is all.

Redirect examination by Mr. AHALT:

Question. I believe, Mr. King, that the company itself is buying this building at 1418 I Street, is it not?
Answer. Yes, sir.
Question. And that Mr. Sansbury is sort of personally supervising the work there, and placing such orders as are necessary.
Answer. He and the vice president, Mr. Smith.
Question. That is the reason why this shade business would not come to your attention?
Answer. That part of it I have not had anything to do with.
Question. But you do have the placing of orders——
Answer. On anything in the rental line of property that we manage, outside of that one piece.
Mr. AHALT. That is all.
(Witness excused.)

240 FRANK BLUNDON was called as a witness on behalf of the respondent, and after having been first duly sworn, testified as follows:

Direct examination by Mr. AHALT:

Question. Mr. Blundon, state your full name and occupation, please.
Answer. My full name is Frank Blundon.
Question. And your occupation?
Answer. Interior decorating and wall papers.
Question. You are in the employ of Hooper & Klesner?
Answer. Yes, sir.
Question. How long have you been in the employ of this firm?
Answer. Since November of 1919.
Question. What is the business that the firm of Hooper & Klesner is engaged in, Mr. Blundon?
Answer. Wall papering and painters.
Question. They manufacture shades?

Answer. Yes, sir.

Question. Where are they now located, Mr. Blundon?

Answer. 929 H Street NW.

Question. How long have they been there?

Answer. Since the 15th of February.

Question. What signs are displayed on this building, or the show windows in connection with the name or business conducted there?

Answer. There is "Wall Papers, Painting", and on the show windows, it is marked, "Window Shades".

Question. Does the name "Hooper & Klesner", appear anywhere on the building?

Answer. Yes, sir. It is the largest sign on the building.

Question. That is the big sign across the entire front, just over the show window, and between the first and second floor?

Answer. Yes, sir. No; it is between the second and third floor, right in the center of the building.

Question. They formerly occupied the premises at the corner of Twelfth and H Street, did they not?

Answer. Yes, sir.

Question. Were they engaged in the same line of business at that address?

Answer. Yes, sir.

Question. Now, Mr. Blundon, during the time of your employment there, with the firm of Hooper & Klesner, have you any knowledge of any customer who called at the store there, either at Twelfth and H Streets, or 929 H Street, with a view of purchasing or inquiring about window shades who made any inquiry as to whether or not this was The Shade Shop, or a place run by Mr. W. Stokes Sammons?

Answer. While we was on Twelfth Street, I recall it was two, or something like that, come in, but they were always instructed where Mr. Sammons was.

Question. Mr. Blundon, state whether or not any instructions were given you by Mr. Klesner or by Mr. Hooper, as to what should be done by you in the event anyone inquired at either
241 Twelfth and H Streets, or 929 H Street, for Mr. Sammons, or The Shade Shop?

Answer. Why, it seems everyone had instructions that if anyone inquired for The Shade Shop, we always replied that this was Hooper & Klesner, and we said, "If you want The Shade Shop, this is not The Shade Shop." Those were persons that we repeatedly answered over the phone and they did inquire for The Shade Shop.

Question. Did you ever answer the phone when any such inquiry was made?

Answer. I have, a few times.

Question. What has been your response?

Answer. "This is Hooper & Klesner's."

Question. Have you ever given any of those persons who were inquiring over the telephone information as to where Mr. Sammons or The Shade Shop might be found?

Answer. Yes, sir.

Question. Have you had any occasion when any customer called in the store and asked whether this was "The Shade Shop," or "the place of Mr. W. Stokes Sammons"?

Answer. I never remember anybody ever asking me that question. Some one has come in and asked for Mr. Sammons, or some one by the name of Horigan, or something like that, and I always told them the place was down the street. That is when we were on Twelfth Street. Since then I never remember anyone coming in asking for that place.

Mr. AHALT. For the purpose of identification, mark this "Respondent's Exhibit No. 8," please.

(The paper referred to was thereupon marked for identification "Respondent's Exhibit No. 8, Witness Blundon.")

Question (by Mr. AHALT). Mr. Blundon, I show you a photograph which has been marked for identification, "Respondent's Exhibit No. 8," and ask you to state whether or not that photograph correctly represents the signs that are maintained on the building at 929 H Street, now occupied by the firm of Hooper & Klesner?

Answer. Yes, sir; exactly.

Question. Has this photograph been taken since you occupied the building?

Answer. Yes, sir.

Mr. AHALT. I offer this in evidence.

(The paper so offered and identified as "Respondent's Exhibit No. 8, Witness Blundon," was received in evidence, and the same is forwarded herewith.)

Question (by Mr. AHALT). Now, Mr. Blundon, during the time that you have been with the firm of Hooper & Klesner, have you heard anyone else in the building or in the employ of the firm of Hooper & Klesner ever inform any person calling, either by telephone or in person, that the place was that of Mr. Sammons, or The Shade Shop?

Answer. No, sir; not to my knowledge.

Question. What part of your time is spent in the storeroom, Mr. Blundon, or immediately in the storeroom or workshop?

Answer. As a rule, I am there in the mornings until half past 9 or something, and then I am in and out all day; no special time to be there after that.

242 Question. Would you say you spent half of your time in and about the place?

Answer. Practically.

Question. More than that?

Answer. Sometimes I do and sometimes I do not.

Question. This storeroom is all open so that you can see everybody in the building and hear about what is going on?

Answer. Yes, sir.

Question. What part of the business conducted by the firm of Hooper & Klesner is the principal business?

Answer. Painting.

Question. Next to that comes what?

Answer. Wall papers.

Question. And next?

Answer. Window shades.

Question. What signs and names, if any, are carried on automobile trucks maintained by the firm of Hooper & Klesner in connection with their business, both while at Twelfth and H Streets, and at the present address at 929 H Street?

Answer. Why, it seems like it is, "Painting, Wall Papers, Interior Decorating, and Window Shades," I think.

Question. Do you recall whether or not the words "Shade Shop" appears anywhere on the trucks?

Answer. I do not think so. It seems on the top of the truck is one place where there is "Window Shades"—it says "Window Shades."

Question. Have you ever taken orders over the telephone for window shades for the firm of Hooper & Klesner?

Answer. Over the phone?

Question. Yes; or either over the phone or in person.

Answer. Yes; I guess I have taken some.

Question. Would they make any special inquiry on those occasions as to whether this was The Shade Shop or Mr. Sammons?

Answer. If we would talk over the phone they would, yes; because anyone gives orders over the phone, unless we know them personally, we do not make shades, unless we get deposits.

Question. You do not make shades on orders over the phone?

Answer. From anybody unless we receive a deposit; unless we know who they are.

Question. What do you tell them under such circumstances, when they inquire over the phone and call the place and order?

Answer. If they call and want window shades, we tell them to come down and make a deposit and then we will take the order.

Question. You tell them it is necessary to call at the place and make a deposit before you can take their order?

Answer. Oh, yes.

Question. Did you have any occasion to observe the mail that is received at the firm of Hooper & Klesner, Mr. Blundon?

Answer. Yes, sir.

Question. How is the mail usually addressed?

Answer. Hooper & Klesner.

Question. Now, Mr. Blundon, has anyone ever called at the place of business of Hooper & Klesner during the time you have
243 been there and complained that they had been misled, or deceived by signs on the building, into the belief that they were trading with The Shade Shop, when, as a matter of fact, they discovered that they were not?

Answer. Not to my knowledge. I would not know unless they reach me in the store, personally. I would not know anything about that personally. If I receive orders, I turn them over to the shade man. I have nothing more to do with them.

Question. I believe Miss Williamson usually answers the phone, does she not?

Answer. Usually, if she is there.

Question. Do you hear her responses frequently to persons calling on the phone?

Answer. Yes, sir.

Question. What have you heard her say when she answered the phone, as the same might pertain to any shade work or anything of that kind?

Answer. Well, as a rule, if anyone called up and says, "Is this the shade shop," she always says, "Shade Shop."

Question. You have heard her repeatedly say that, or, respond, at least, to inquiries over the phone, "This is Hooper & Klesner's shade shop"?

Answer. Why, I hear her once in a while getting a call over the phone, the Shade Shop, or something like that, or some shade shop.

Question. I am only asking as to what you heard her say in answering the telephone, whether you have ever heard her, and if so, whether repeatedly, in answering the phone say, "This is Hooper & Klesner's Shade Shop"?

Answer. Yes, sir; always. That is the instructions she received.

Mr. AHALT. I think that is all.

Cross-examination by Mr. HAWKINS:

Question. When did you say you went to work for Hooper & Klesner, Mr. Blundon?

Answer. In November, 1919.

Question. Mr. Hooper was connected with the firm at that time?

Answer. No; I do not think so.

Question. Is he connected with it now?

Answer. I do not think so. Of course, I have nothing to do with the personal matters of the business. I do not know.

Question. Has he ever been around there since you have been there?

Answer. He was around there for a week or two.

Question. When?

Answer. When I went there.

Question. Well, was he in control, or direction of the business at that time?

Answer. No, sir.

Question. Did he take any active part in it?

Answer. No, sir.

Question. So, since you have been there, the business has been directed entirely by Mr. Klesner, has it not?

Answer. Yes, sir.

244 Question. Where is Mr. Hooper now?

Answer. I could not even tell you that. I do not know.

Question. Have you seen him any time since the first week or two that you were there?

Answer. I have not seen him since the first of December of 1919.

Question. You do not know where he is?

Answer. No, sir.

Question. Now, when you went with Mr. Klesner, what were your duties?

Answer. My duties was attending to the wall papering end of the firm.

Question. That is what you were employed for?

Answer. Yes, sir.

Question. Are you a wall paperer?

Answer. Yes, sir.

Question. Your duties require that you go out and hang the paper, don't they?

Answer. No; no, sir.

Question. What are your duties?

Answer. My duties is to look after the wall paper; see that the jobs we get are done.

Question. Then, do you boss the jobs?

Answer. Yes, sir; practically.

Question. In doing that, you have to be away from the store about 50 per cent of the time, do you not?

Answer. Something like that; yes, sir.

Question. You are out seeing that the jobs are being done in a workmanlike manner?

Answer. Yes, sir.

Question. So, of course anything that happened inside of the store when you were away, you would not know anything about, would you?

Answer. Of course I would not know everything.

Mr. AHALT. I object.

The WITNESS. I would not know everything that went on. There are some little things maybe I would not know.

Question (by Examiner DUNHAM). Did you understand his question, Mr. Witness?

Answer. He asked me, I think, that if something went on in the store while I was out, would I know anything about it. Was not that the question you asked me?

Question. You say you know something about it?

Answer. I say, sometimes I may know about it and sometimes I did not.

Question (by Mr. HAWKINS). It is that you did know something. How did you know it?

Answer. Well, either by somebody informing me of it——

Question. You would know it of your own knowledge?

Answer. No.

Question. Now, the questions I am asking you, I want you to only answer what you know of your own knowledge, and not what somebody has told you. Who gave you the instructions you have just told Mr. Ahalt about?

945 Answer. What instructions is that do you mean?

Question. What instructions did you have about answering the phone?

Answer. Why, Mr. Klesner gave me any instructions if anyone called up over the phone and asked for the Shade Shop, to tell them that this was not the Shade Shop, but this was Hooper & Klesner. If they wanted the Shade Shop, they had the wrong number. That was usually the answer we gave.

Question. When did Mr. Klesner tell you this?

Answer. He told me that when I went to work there.

Question. When you first went there?

Answer. Yes, sir.

Question. Tell me just exactly what he said to you.

Answer. I have just told you just what he told me to answer over the phone.

Question. Did he say anything about the reason for his telling you that?

Answer. He did not at the time; no, sir.

Question. Did he tell you that Mr. Sammons was operating the Shade Shop?

Answer. No, sir; he never told me that.

Question. Did you know that Mr. Sammons was trading as "The Shade Shop"?

Answer. I really never gave it a thought at the time. I had nothing to do with Mr. Sammons. It never entered my mind.

Question. The question was, Did you know at that time?

Answer. I did not at that time, but I discovered that later.

Question. When did you discover it?

Answer. I suppose I may have been there a month, or something like that, when I discovered that. I understood how it was that there was some misunderstanding between Mr. Sammons and Mr. Klesner and they had separated, or something; I do not know how it was. I knew they used to be in the store together at one time.

Question. How did it come to your knowledge that Mr. Sammons was operating the Shade Shop?

Answer. I could not tell you. I suppose——

Question. Not what you supposed.

Answer. Well, how can I tell you? You know a lot of knowledge, but you don't know how you know.

Question. I am just asking you how you know.

Answer. I can't remember. I don't know.

Question. As I understand your testimony, then, Mr. Klesner told you that if anybody asked for The Shade Shop, that you were to say, "This is Hooper & Klesner's"?

Answer. Yes, sir.

Question. That is correct?

Answer. Yes, sir.

Question. What other instructions concerning this did you have?

Answer. What other instructions concerning what?

Question. Answering inquiries as to The Shade Shop.

Answer. Well, naturally, if anybody would ask for The Shade Shop, we would say, "This is not The Shade Shop." Those were our instructions.

246 Question. Now, if a customer came in and asked for The Shade Shop, what would you say? What did you say?

Answer. I only had knowledge of two people coming in there asking for The Shade Shop.

Question. When was it that they came in?

Answer. I can not remember the date or anything like that.

Question. Was it last week or a year ago?

Answer. No; it was done, perhaps, last summer or last fall, something like that.

Question. Was the first one that came in a man or a women?

Answer. It was two women that came in one day, to my knowledge.

Question. Together?

Answer. Yes, sir.

Question. What did they say?

Answer. Just wanted to know if it was The Shade Shop.

Question. What did you say?

Answer. I told them, "No; The Shade Shop is down the street."

Question. What did they do?

Answer. They went out.

Question. When was it that the next occasion occurred?

Answer. I do not know just when that was. I do not know the date.

Question. Generally speaking?

Answer. It was in the fall, sometime.

Question. Of what year?

Answer. Of last year.

Question. Who was it that came in then?

Answer. Some man.

Question. What did he say?

Answer. Asked if this was The Shade Shop, and I said, "No."

Question. Yes; what else did you say?

Answer. I told him, "The Shade Shop is down the street." I did not tell him just where it was. I said it was down the street. I did not know myself.

Question. I thought you said your instructions were to say, "No; this is Hooper & Klesner's"?

Answer. That was our instructions to answer over the phone, "Hooper & Klesner." Anybody could see the sign on the store. It was "Hooper & Klesner's."

Question. Mr. Witness, I do not want to argue with you. Go back again and tell me, were your instructions that when somebody came in the store and asked it was The Shade Shop, you were to answer, "This is Hooper & Klesner's," or were your instructions to tell them to go down the street?

Answer. It was either way. We could tell them, "This is Hooper & Klesner's," or "The Shade Shop is down the street."

Question. So, then, you want us now to understand that your instructions were to tell them that it was Hooper & Klesner's or tell them to go down the street?

Answer. Tell them, "The Shade Shop is down the street."

Question. Or could you tell them, "This is Hooper & Klesner's"?

Answer. Yes, sir.

Question. Could you be mistaken about that?

Answer. About what?

247 Question. About your instructions.

Answer. If I told them it was Hooper & Klesner's, it would be Hooper & Klesner's. It is not The Shade Shop.

Question. I am not asking you that. I am asking you what your instructions were.

Answer. My instructions were that anybody inquiring for The Shade Shop, to tell them that we were not The Shade Shop. That was the instructions.

Question. Anything else?

Answer. That is all. We were to impress anybody that wanted The Shade Shop that that was not The Shade Shop.

Question. Wouldn't you tell them anything else?

Answer. Nothing else unless they asked me some question. You don't tell them anything unless they ask a question.

Question. Mr. Blundon, what I have been asking you, of course, is to tell me what your instructions were, and you have said first, that your instructions were to say, "This is Hooper & Klesner's," and then you said later on that your instructions were to direct them to go down the street.

Answer. I did not say that was our instructions to direct them to go down the street.

Question. Were those your instructions?

Answer. No, sir.

Question. Were the only instructions you had to tell them that it was Hooper & Klesner's?

Answer. That was the instructions, that it was Hooper & Klesner's. I would know the instructions. Those were our instructions.

Question. Mr. Klesner did not instruct you to tell them to go down the street?

Answer. No; why should he?

Question. I am not asking you why he should. I am only asking you as to the fact.

Answer. I usually told them where to go; directed them where to go.

Question. You did that of your own volition. That was not part of the instructions?

Answer. Yes, sir.

Question. You could not be mistaken on that?

Answer. I was instructed to impress upon their minds that it was not The Shade Shop. That is the instructions we had.

Question. As a matter of fact, was not this your instruction: you were to tell them, "This is Hooper & Klesner's shade shop"?

Answer. That was not.

Question. It was not?

Answer. No. It was our instructions to tell them this was Hooper & Klesner's and not The Shade Shop. There you are.

Question. Now, Mr. Blundon, supposing somebody came in the store—that is, did not call over the telephone, but came in the store, and inquired for "Shade Shop," what did you tell them?

Answer. If they come in the store and not inquired over the telephone?

Question. Or, inquired over the telephone?

Answer. If someone inquired over the telephone for "Shade Shop," we would say, "This is Hooper & Klesner's shade shop."

248 Question. Anything else?

Answer. If they asked for The Shade Shop, we would tell them——

Question. I did not say that. I asked you if they asked for "Shade Shop" what would you say?

Answer. Say, "This is Hooper & Klesner's shade shop."

Question. Then, I asked you if you said anything else?

Answer. I would not say anything else unless they asked something else.

Question. How many times did that occur while you were there?

Answer. I can not tell you how many times it occurred.

Question. Was it often? Was it frequent?

Answer. No; not so very often.

Question. It did occur, did it not?

Answer. Oh, yes; sure.

Question. And it still occurs, now, does it not?

Answer. Yes, sir; not frequently.

Question. It does occur?

Answer. Yes, sir.

Mr. HAWKINS. That is all.

Redirect examination by Mr. AHALT:

Question. Mr. Blundon, when you say that you had instructions you do not attempt, at this time, to quote the exact words that were given you by way of instructions, but to state in a general way that you had instructions from Mr. Klesner to inform persons calling over the telephone or calling at the store inquiring for The Shade Shop, to make it plain to them that this was not The Shade Shop, but was the place of Hooper & Klesner's or, Hooper & Klesner's shade shop? Is that not correct?

Mr. HAWKINS. I object to the question as being extremely leading, putting the answer exactly in the witness' mouth, and I want the record to show that I object to it.

Examiner DUNHAM. Now, Mr. Witness, you can answer.

Mr. AHALT. I will withdraw that question and put it in another form.

Question by Mr. AHALT. Mr. Blundon, state whether or not your instructions, given by Mr. Klesner, can be recalled by you at this time in the exact language, or whether or not you are giving your best recollection as to what the instructions were?

Answer. Well, naturally, anybody receiving instructions can not tell you exactly what anyone tells you. It is hard to remember the exact words. What I was trying to impress upon this gentleman is that I told him how we were instructed, merely to inform people over the phone that this was not The Shade Shop; try to impress upon the mind that it was not.

Question. State whether or not the instructions you received were not to the effect that it was your duty to reply to inquiries made for The Shade Shop or for Mr. Sammons by informing these customers or inquiries that it was not The Shade Shop but that it was the place of Hooper & Klesner's, or Hooper & Klesner's shade shop?

Mr. HAWKINS. I object to that as being extremely leading.

Examiner DUNHAM. Now, you can answer.

The WITNESS. I thought I had answered those questions a couple of times.

249 Question (by Examiner DUNCAN). Can you answer again?

Answer. That is, if anyone called and asked for The Shade Shop?

Mr. AHALT. Let us have the question, first, now, and see if you can not answer it "yes" or "no."

Mr. HAWKINS. Well, this is direct examination.

Mr. AHALT. Let him explain it the way he pleases.

The WITNESS. Give me that question.

Mr. HAWKINS. There is no showing whatever that he is a hostile witness.

Mr. AHALT. I am asking him what his instructions were in effect, and whether he is attempting to have this commission understand that he is attempting to say specifically in the exact words what his instructions were. I think the witness has a perfect right to say, and I have a perfect right to make the question.

Mr. HAWKINS. If he does not know what his instructions were, let him say so.

Examiner DUNHAM. Read the question, please, so that the witness will know just what he is answering.

(Thereupon the reporter read the pending question.)

The WITNESS. Yes, sir; it was the instructions. The instructions were to that effect.

Mr. AHALT. That is all.

Recross-examination by Mr. HAWKINS:

Question. Have you now, Mr. Blundon, any clear, distinct, recollection as to what your instructions were?

Answer. Well, I have told you as nearly as possible.

Question. Now, you can answer me "yes" or "no," and explain afterwards.

Answer. I have no plainer recollection than what I have already answered as to the exact words.

Question. To the best of your recollection, then, do you now think that your instructions were to say——

Mr. AHALT. I object. The witness has stated on several occasions that he has answered as nearly as he possibly can, and such evidence is certainly being put into the record as falls within the very proposition that counsel for the commission has objected to so seriously on several occasions.

Mr. HAWKINS. Will you read me, Mr. Reporter, what I asked before I was interrupted?

Examiner DUNHAM. You would not insist on cross-examination that he could not ask leading questions?

Mr. AHALT. I am not objecting on the ground of leading questions. I say that the witness has answered it half a dozen times.

(Thereupon, the reporter read the pending question, as follows:)

"To the best of your recollection, then, do you now think that your instructions were to say"——

Question (by Mr. HAWKINS, continuing.) This is Hooper & Klesner's?

Answer. The instructions was as I just explained them.

Question. You can answer that "yes" or "no," and explain afterwards.

250 Answer. No, I can not; not very well.

The WITNESS. It would be "No, sir;" no, my instructions was not to that effect.

Question (by Mr. HAWKINS). Well, as I recall, when I first started to cross-examine you those are what you told me were your instructions, and now you say those were not your instructions——

Mr. AHALT. I insist on the witness answering the question and being permitted to answer it as fully as he did.

Question. (by Mr. HAWKINS). If those were not your instructions, what were your instructions?

Answer. I have explained to you, once, sir, that my instructions were to impress upon people that it was not the Shade Shop, but it was Hooper & Klesner's. In the record you can see that I said that and mean that.

Question. Were your instructions to do that in any particular language at all, and use any words?

Answer. Use any words; what do you mean?

Question. Any special words to signify that.

Answer. We were not instructed to use no special words. Personally, I usually use the words, "This is not the Shade Shop. This is Hooper & Klesner's."

Mr. HAWKINS. That is all.

Mr. AHALT. That is all.

(Witness excused.)

KATHERINE BIGGS WILLIAMSON was called as a witness on behalf of the respondent, and after having been first duly sworn, testified as follows:

Direct examination by Mr. AHALT:

Question. Miss Williamson, state your full name and occupation, please.

Answer. Katherine Biggs Williamson, typewriter, bookkeeper, and general office work.

Question. By whom are you employed?

Answer. Hooper & Klesner.

Question. How long have you been employed by Hooper & Klesner?

Answer. Eight years.

Question. Where were they located when you were first employed by them?

Answer. 721 Eleventh Street NW.

Question. You have continued to be in their employ up to this time?

Answer. Yes, sir.

Question. Do you recall when Mr. Sammons was with or located in the same building at Twelfth and H Streets, with the firm of Hooper & Klesner?

Answer. Yes, sir.

Question. And he conducted the business of making shades there?

Answer. Yes, sir.

Question. What were your duties in connection with Mr. Sammons' business, if any, while Mr. Sammons had his business there?

251 Answer. We used to write his bills and answer the telephone.

Question. What were the arrangements and your instructions, if any, as to what you should do in the event a customer called at the store who was desirous of purchasing shades or inquired about shades?

Answer. At the time Mr. Sammons was there?

Question. Yes.

Answer. I called Mr. Sammons to the office.

Question. In the event Mr. Sammons was not there, what would you do?

Answer. I would call somebody else that was in his office, and if there was not anybody in there, why, I would take the order; yes.

Question. That applied to all customers who came into the store, who were inquiring for shades and wanted to place an order for shades?

Answer. Yes, sir.

Question. Miss Williamson, what signs were maintained on the building at Twelfth and H Streets while Mr. Sammons was there, as they might relate to the shade business?

Answer. You mean The Shade Shop? He had it, "The Shade Shop" on the windows.

Question. What signs, if any, were on the building pertaining to the business of Hooper & Klesner?

Answer. "Shade Shop," and "Hooper & Klesner."

Question. I mean while Mr. Sammons was there?

Answer. "Hooper & Klesner" was on the outside, and then, on the other side was "The Shade Shop," and "Window Shades."

Question. They had signs, "Painters, Wall Papers"?

Answer. Yes; wall papers, and so forth.

Question. After Mr. Sammons left Twelfth and H Streets what signs were maintained on the windows by Hooper & Klesner as to the shade business?

Answer. "Shade Shop," and "Window Shades."

Question. What is the principal business of Hooper & Klesner, Miss Williamson?

Answer. Painting, wall papering, interior decorating, and window-shade making.

Question. In what business were they engaged when you first were employed by them and up to the time prior to when they moved to Twelfth and H Streets?

Answer. Wall papers, painters, and interior decorating.

Question. Did they take any orders for shades during that time?

Answer. Well, they handled window shades.

Question. They placed the orders, I believe, with Mr. Sammons, for the purpose of being made up?

Answer. Mr. Sammons.

Question. Miss Williamson, state whether or not you had any instructions from either Mr. Hooper or Mr. Klesner as to what you should do in the event anyone called inquiring for Mr. Sammons, either by telephone or in person, or inquiring for The Shade Shop, following the time that Mr. Sammons left the corner of Twelfth and H Streets?

252 Answer. I always told everybody that came in there that it was Hooper & Klesner's, or anyone that called up on the telephone, I said it was Hooper & Klesner's.

Question. Did Mr. Klesner or Mr. Hooper give you instructions?

Answer. Mr. Hooper and Mr. Klesner both gave me instructions.

Question. You knew of the little controversy that existed between Mr. Sammons and the firm of Hooper & Klesner, did you not?

Answer. Yes; somewhat.

Question. When did you receive any such instructions?

Answer. What do you mean?

Question. As to informing the inquirers that this was not The Shade Shop?

Answer. As soon as Mr. Sammons left.

Question. In the course of your duties have you had many occasions to have persons inquire over the telephone as to shades?

Answer. Yes.

Question. Have many of those inquiries been for The Shade Shop?

Answer. Well, I have had inquiries asking if it was not The Shade Shop.

Question. What would you say or do?

Answer. I said it was "Hooper & Klesner's shade shop."

Question. Hooper & Klesner's shade shop?

Answer. Yes, sir.

Question. Did you ever, on any of those occasions, inform the inquirers where The Shade Shop might be found?

Answer. I have told them where The Shade Shop was, and in quite a few cases gave Mr. Sammons's telephone number.

Question. As far as you are personally concerned, you had no controversy with Mr. Sammons, did you?

Answer. You mean since he left?

Question. When he left. You were not mixed up personally in this controversy between the two of them, were you?

Answer. No.

Question. What would you do when persons called at the store if they should inquire for The Shade Shop, or for Mr. Sammons?

Answer. I would generally direct them to where Mr. Sammons was.

Question. Have you any recollection of any person calling at the store in person since Mr. Sammons left, who made inquiry as to whether Mr. Sammons was in, or whether that was his place of business?

Answer. What did you say? Will you say that over again?

Mr. AHALT. Read the question, please.

(Thereupon, the reporter read the pending question.)

The WITNESS. Well, I believe there has been some people asked for Mr. Sammons.

Question (by Mr. AHALT). Will you state whether or not on any of those occasions you have ever informed such persons that this was The Shade Shop?

Answer. No; never.

Question. Have you ever informed any of them who might inquire if Mr. Sammons was in, that he was out?

Mr. HAWKINS. I will object to all of this line of examination as being extremely leading.

253 Question (by Mr. AHALT). Do you have any occasion, in the course of your duties, to observe the mail that is addressed to the firm of Hooper & Klesner, Miss Williamson?

Answer. Yes.

Question. Will you state how the mail is addressed to the firm of Hooper & Klesner?

Answer. It is addressed to Hooper & Klesner.

Mr. AHALT. I will ask you to mark these two envelopes respondent's Exhibits No. 9 and No. 10, for identification.

(The papers referred to were thereupon marked for identification, "Respondent's Exhibits Nos. 9 and 10, Witness Williamson.")

Question (by Mr. AHALT). Miss Williamson, I show you respondent's Exhibit No. 9, marked for indentification, and ask you to state what it is.

Answer. State what it is?

Question. Just state what that is,

Answer. Hooper & Klesner.

Question. No; I mean state what it is. Is that an envelope, or what is it?

Answer. It is an envelope. What do you mean?

Question. This exhibit appears to be an envelope bearing the return address of E. Arnold Nice Company, Manufacturers and Importers of Window Shades, Curtains, etc., Baltimore, Md. Will you state whether or not that was received in the usual course of business at Hooper & Klesner's.

Answer. Yes, sir.

Question. I show you Respondent's Exhibit No. 10, marked for identification, which appears to be an envelope bearing the return address of Lapsley & Bro., Company, 24 Hopkins Place, Baltimore, Md. I will ask you to state whether that was received in the ordinary course of business?

Answer. Yes.

Question. What business is that firm engaged in, Miss Williamson?

Answer. Shade business.

Question. They handled window-shade material?

Answer. Yes.

Mr. AHALT. I offer these in evidence.

(The papers so offered and identified as "Respondent's Exhibits Nos. 9 and 10, Witness Williamson," were received in evidence, and the same are forwarded herewith.)

Question (by Mr. AHALT). Miss Williamson, will you state whether or not all correspondence which has come to your attention from any window-shade manufacturers or jobbers in window-shade material, rollers, etc., that has come to the place of business of

Hooper & Klesner, has been addressed to Hooper & Klesner, or whether it has been addressed to The Shade Shop?

Answer. Hooper & Klesner.

Question. Have you any knowledge of any occasion since Mr. Sammons left Twelfth and H Streets, of any mail coming to the firm of Hooper & Klesner addressed "Shade Shop," or "The Shade Shop"?

254 Answer. A couple of letters.

Question. What was done with those letters?

Answer. They were given to the letter carrier and returned.

Question. Do you recall from whom either of these letters were, or envelopes?

Answer. I think very recently there was one came from the A. O. Bliss Co.

Question. I show you Respondent's Exhibit No. 8, and ask you whether that photograph correctly represents all the advertising matter, or signs as to the business conducted on those premises, which really did exist at those premises now occupied by Hooper & Klesner?

Answer. Yes.

Question. Will you state whether or not any person has complained either over the telephone or in person to you or to any member of the firm in your presence, and within your hearing, about having been misled into purchasing shades of Hooper & Klesner when they thought and believed they were purchasing from the Shade Shop?

Answer. No.

Question. I believe you stated that you kept the books for the firm of Hooper & Klesner?

Answer. Yes, sir.

Question. I will ask you whether or not during the time that you have been in their employ they have at any time, on any of their stationery, billheads, or otherwise, used the words "Shade Shop"?

Answer. No.

Question. The only instance in which they have has been, as you have testified, on the windows?

Answer. Yes, sir.

Mr. AHALT. Will you mark this for identification as Respondent's Exhibit No. 11?

(The paper referred to was thereupon marked for identification, "Respondent's Exhibit No. 11, Witness Williamson."

Question (by Mr. AHALT). I show you a paper which has been marked "Respondent's Exhibit No. 11," and ask you to state whether or not that is the style of letterhead used by the firm of Hooper & Klesner at this time?

Answer. Yes, sir.

Question. And has that been in use since you have been at 929 H Street?

Answer. Yes, sir.

Mr. AHALT. I offer this in evidence.

(The paper so offered and identified as "Respondent's Exhibit No. 11, Witness Williamson," is received in evidence and the same is forwarded herewith.)

Mr. AHALT. That is all.

Cross-examination by Mr. HAWKINS:

Question. Miss Williamson, you were in the court room here while Mr. Blundon was testifying, were you not?

Answer. Yes.

Question. You were sitting down at the end of the table to the right of where you are sitting now, were you not?

Answer. Yes.

255 Question. And you were sitting right next to Mr. Klesner?

Answer. Yes.

Question. During all of the testimony given by Mr. Blundon?

Answer. Yes.

Question. Do you recall Mr. Klesner speaking to you during that testimony?

Answer. Yes, sir.

Question. During that testimony, did he turn to you and say to you, "Don't say that"?

Answer. No.

Question. What was it that he said to you?

Answer. I told him that—he told me to say it was "Hooper & Klesner's shade shop.

Question. So Mr. Klesner told you a few minutes ago to say it was Hooper & Klesner's shade shop?

Answer. I said he had told me to say so—I told him, I said, "You had informed me to say it was Hooper & Klesner's shade shop."

Question. When you said that, what did he say?

Answer. He did not say anything; just smiled.

Question. I thought I overheard him say that to you. Was I mistaken?

Answer. Yes; you were mistaken.

Question. Commissioner's Exhibits Nos. 8 and 9, these two envelopes that you have just testified to, where did you get those?

Answer. Well, they must have been directed to us from the firm——

Question. Do you know? Not what must have happened, now. Do you know?

Answer. They have got the date and everything on them, 1915. They were addressed to the firm.

Question. But, do you know whether they were or not? Did you ever see them before Mr. Ahalt handed them to you a few minutes ago?

Answer. We have got lots of envelopes in the office.

Question. I am asking you about these two.

Answer. I could not state positively it was these two envelopes. We have had so many.

Question. Can you tell me whether you have ever seen those two envelopes before Mr. Ahalt handed them to you a few minutes ago, Respondent's Exhibits No. 9 and 10?

Answer. I can not say I saw these two exact ones.

Question. Do you know what was inside of them?

Answer. Well, I suppose some correspondence from the companies.

Question. Not what you supposed. I asked you if you know; if you can, tell me, please. I do not want your supposition. I just want your best recollection.

Answer. I could not state positive what was in those letters.

Question. Can you state positively that those two envelopes were received at Hooper & Klesner's in the regular course of business?

Answer. Yes.

Question. Are you positive about that. What refreshes your recollection as to that?

Answer. Because we have got so much correspondence from them.

256 Answer. From E. Arnold Nice Co. and Lapsley & Bro. Co.

Question. Have you had those two laid aside to use to-day?

Answer. No; I have not.

Question. Did you pick those out before you came here.

Answer. No.

Question. Did you talk to anybody about those two envelopes before you came here at all?

Answer. No.

Question. You do not know what was inside of them?

Answer. No; I could not say positively what was inside of the envelopes.

Question. You think because they are addressed to Hooper & Klesner that they were received?

Answer. Yes.

Question. Because you have received a lot of others similar to that?

Answer. Yes, sir.

Question. There is not any particular significance about those two envelopes, is there?

Answer. No.

Question. Now, you were working for Hooper & Klesner at the time that Mr. Sammons left, were you not?

Answer. Yes, sir.

Question. Where is Mr. Hooper now?

Answer. Hollywood, Calif.

Question. How long has he been away?

Answer. Since about the middle of November, 1919.

Question. Has he any connection with the business since then?

Answer. No.

Question. After Mr. Sammons left there at Twelfth and H Streets, what were your instructions?

Answer. What do you mean? About window shades?

Question. What were your instructions with reference to replies you were to make to customers who inquired if this was The Shade Shop? Who gave you instructions and when was it and what were they?

Answer. Mr. Hooper and Mr. Klesner both gave me instructions when Mr. Sammons left to tell everybody that it was Hooper & Klesner's shade shop.

Question. Hooper & Klesner's shade shop?

Answer. Yes sir; "Hooper & Klesner's shade shop."

Question. You are positive they said, "Hooper & Klesner's shade shop," and not "Hooper & Klesner's"?

Answer. Hooper & Klesner's. I made it plain to everybody it was Hooper & Klesner's.

Question. When they told you that, were they together?

Answer. Yes, sir; they were together.

Question. When was it, with reference to the time Mr. Sammons left?

Answer. Right a couple of days after Mr. Sammons left.

Question. What else did they say to you at that time?

Answer. They just told me that if anybody should come in or call up on the telephone and ask for Mr. Sammons to say that it was Hooper & Klesner's.

257 Question. If anybody called up and asked if this was "Shade Shop," what were your instructions?

Answer. I always said it was "Hooper & Klesner's shade shop.

Question. Did you ever direct anybody to go down the street to Mr. Sammons's?

Answer. Yes; I have.

Question. About how frequently?

Answer. Very often I told them.

Question. About how frequent was it that you had to inform people over the telephone that this was Hooper & Klesner's?

Answer. Well, it seems in the past month or so, some one has been calling me up on the telephone asking for The Shade Shop, and I would give them Mr. Sammons's telephone number. Well, I would be called up again, and it seemed to me that it was the same voice, same woman.

Question. Do you know who she was?

Answer. No; I do not know who she was.

Question. Did I understand you to say to Mr. Ahalt that on any one of the letterheads used by Hooper & Klesner they ever had "Shade Shop" on them?

Answer. Well, when Mr. Sammons was there we had some stationery—never used, had "Shade Shop" on it. Some old stationery we had.

Question. Was that Hooper & Klesner's stationery, or Mr. Sammon's stationery?

Answer. Who—Hooper & Klesner never used the words "The Shade Shop."

Question. Did they ever use it in any form at all?

Answer. Never.

Question. So you think now that Hooper & Klesner never had a letterhead or billhead with "Shade Shop" in any manner, shape, or form? Is that correct?

Answer. They have had the words "Shade Shop" written on some letterheads.

Question. And did they have it on their billheads?

Answer. Well, of course, they had to have it on the billheads if they had it on the letterheads.

Question. Not what they had to have, but I want to know whether they did or not. Did they?

Answer. Yes; it was on the billheads, too.

Question. During what period was it when Hooper & Klesner had "Shade Shop" on their letterheads and billheads? Was it before or after Mr. Sammons left?

Answer. I believe it was after Mr. Sammons left.

Question. That is what I thought. Now, after Mr. Sammons left, Mr. Klesner was very bitter against him, was he not?

Answer. Of course, I do not know of their particular friendship about the matter.

Question. You were in the store every day, working, were you not?

Answer. Yes, sir.

Question. What are the facts from what you know?

Answer. I do not believe they were on very friendly terms.

Question. What did you hear Mr. Klesner say about Mr. Sammons?

258 Mr. AHALT. I object. That is not relevant to this case at all as to what Mr. Klesner might have said about Mr. Sammons, and up to this time it has not been disputed. In fact, I think everybody is agreed that they are not on good terms and were not at that time.

Mr. HAWKINS. Do you agree that since that time, Mr. Klesner has been hostile and has felt very bitter toward Mr. Sammons?

Mr. AHALT. I think Mr. Klesner testified to that.

Mr. HAWKINS. I was asking you if you agreed to it.

Mr. AHALT. I won't agree to the fact that he was hostile. I will say they have not been on, as far as I know, speaking terms.

Mr. HAWKINS. I will ask your witness and see if she knows.

Question (by Mr. HAWKINS). What do you know, from your experience?

Answer. I do not think they have been on very friendly terms there.

Question. Mr. Klesner has expressed his disapproval and dislike of Mr. Sammons on a great many occasions in the store, has he not?

Mr. AHALT. I object to that question on the same ground as stated in my previous objection.

Examiner DUNHAM. You can answer the question; the objection is in.

The WITNESS. I never heard him say anything against Mr. Sammons.

Question (by Mr. HAWKINS). Did you ever hear him express his dislike of him?

Answer. He may have said that he did not care for him.

Question. Not what he may have said. Did he?

Mr. AHALT. If you remember.

Mr. HAWKINS. Well, now, do not coach the witness.

Mr. AHALT. I have not been coaching the witness.

Mr. HAWKINS. There has been enough of that.

(Discussion off the record.)

The WITNESS. I do not remember him every saying anything.

Question (by Mr. HAWKINS). You want your answer to be now, "I do not remember"? Is that correct, Miss Williamson?

Answer. Yes.

Question. Well, you don't remember; now why, Miss Williamson, do you think they have not been on good terms?

Answer. Well, perhaps. Of course, they had a misunderstanding about something.

Question. What makes you remember they had a misunderstanding, if you do remember?

Answer. Because they were not speaking, and naturally when people don't speak, they must have some misunderstanding.

Question. You remember that they were not on speaking terms?

Answer. I remember they were not on speaking terms.

Question. How did you discover that?

Answer. Well, because Mr. Sammons did not come into our place, and we did not go into Mr. Sammons' place. Mr. Klesner did not go into Mr. Sammons'.

Question. Did you ever hear Mr. Klesner say he was not on speaking terms with Mr. Sammons?

Answer. I knew it. He never spoke to me about Mr. Sammons.

259 Mr. AHALT. I object to this line of testimony extremely, on the ground that it is padding the record. The witness has already said that they were not on speaking terms, not on friendly terms, and that is about all that she knows about it.

Question (by Mr. HAWKINS). I asked you if you had ever heard Mr. Klesner say that he was not on speaking terms with Mr. Sammons. Is your answer to that, "No."?

Answer. No.

Question. You never heard him say that?

Answer. No.

Question. Did you ever hear him discuss Mr. Sammons at all, in the store?

Answer. No; I do not remember. No; I do not think he did.

Question. Did you ever hear Mr. Hooper discuss it?

Answer. No.

Question. Well, then, what led you to think that they were not on friendly terms?

Answer. Well, because I knew they had a misunderstanding and Mr. Sammons did not come into our place, as I said before, and Mr. Klesner did not go in there. I did not ask him why.

Question. How did you know they had a misunderstanding?

Answer. Because I knew they did.

Question. How did you know?

Answer. Well, they had a misunderstanding when Mr. Sammons left.

Question. How did you get that information that they had the misunderstanding?

Answer. Mr. Sammons had spoken to me about it, and Mr. Hooper had spoken about it.

Question. Did not Mr. Klesner speak about it?

Answer. Not to me direct; never said anything to me direct about it.

Question. Mr. Hooper did, did he not?

Answer. Mr. Hooper spoke about it.

Question. And he expressed his disapproval of Mr. Sammons, did he not?

Answer. Who, Mr. Hooper?

Question. Mr. Hooper.

Answer. Yes.

Mr. AHALT. I object to all of this examination, cross-examination of this witness on the ground that it is entirely irrelevant and has absolutely nothing to do with the issues of this cause.

Question (by Mr. HAWKINS). What did Mr. Hooper say about the misunderstanding between him and Mr. Sammons?

Answer. He just said—that was the time this misunderstanding took place; I was sick. I was not there. When I came back, I just heard they had some little misunderstanding about the sign.

Question. What did Mr. Hooper say about it?

Answer. He just said that Mr. Klesner had a little scrap with Mr. Sammons. That was all that was ever said about it.

Question. That is all you know about it, is that Mr. Hooper said that Mr. Klesner had a scrap with Mr. Sammons?

Answer. Yes; that is all I know.

Mr. HAWKINS. That is all.

260 Redirect examination by Mr. AHALT:

Question. Miss Williamson, will you state whether or not it was an uncommon thing to receive mail from the firm of E. Arnold

Nice Co. and Lapsley & Bro., manufacturers of the window-shade material, by the firm of Hooper & Klesner?

Answer. We always received our mail, Hooper & Klesner.

Question. Did you receive considerable mail and have correspondence with these two firms just mentioned?

Answer. Yes.

Question. Did the firm of Hooper & Klesner make purchases from them?

Answer. Yes.

Mr. AHALT. That is all.

Recross-examination by Mr. HAWKINS:

Question. Who is this firm of E. Arnold Nice Co., Miss Williamson?

Answer. They are shade manufacturers, Baltimore, Md.

Question. How often do you receive mail from them now?

Answer. We do not receive any mail from them now.

Question. I thought you said it was a common practice for you to receive mail from them?

Answer. We did at that time.

Question. How long has it been since you have received mail from them?

Answer. E. Arnold Nice Co.?

Question. Yes.

Answer. Oh, it has been over two years, from E. Arnold Nice Co.

Question. How much over two years?

Answer. Quite a good bit over two years.

Question. Three years?

Answer. Yes; I could almost say three years.

Question. Would you say it was four years?

Answer. Well, I could not say—I know it has been over three years.

Question. You remember that alright, do you?

Answer. Yes; I remember it is over three years.

Question. Have you any memory any longer than three years as to when you received mail from E. Arnold Nice Co.?

Answer. Well, I know it has been quite some time. I could say it is three years, anyhow.

Question. Don't you know that they are out of business?

Answer. Yes, I do. I was just going to tell you that they were out of business.

Question. And that they have been out of business for over five years?

Answer. I do not know whether——

Question. What is your memory as to that?

Answer. I was talking to a salesman a couple of weeks ago, and he mentioned the fact that they were out of business.

Question. I am asking you as to your memory, as to how long E. Arnold Nice Co. has been out of business.

Answer. We have not received any mail up to three years. I could not say as to that.

261 Question. Don't you know you have not received any mail for over five years?

Answer. I know it has been over three years. I did not say positively.

Question. Who is this firm of Lapsley & Bro. Co.?

Answer. Shade manufacturers.

Question. Are they still in business?

Answer. Yes, sir.

Mr. HAWKINS. That is all.

Redirect examination by Mr. AHALT:

Question. Miss Williamson, will you state whether or not you have had any conversation with Mr. Sammons on the street or otherwise since Mr. Sammons left this place at Twelfth and H Streets?

Answer. Yes, sir.

Question. Did he ever discuss with you his business, or that of Hooper & Klesner's?

Answer. Yes.

Question. What was this discussion about?

Answer. He would always come up with me by saying that I had gotten one of his orders.

Question. What else would he say?

Answer. That is all he discussed; I had taken one of his orders; something to that effect.

Mr. AHALT. That is all.

(Witness excused.)

Examiner DUNHAM. We will take a recess now until 1.30 o'clock p. m. tomorrow.

(Thereupon, at 4.15 o'clock p. m., an adjournment was taken until 1.30 o'clock p. m., Thursday, April 21, 1921.)

April 21, 1921

Before the Federal Trade Commission

[Title omitted.]

ROOM 2702, FEDERAL TRADE COMMISSION BUILDING,
Washington, D. C., Thursday, April 21, 1921.

Met pursuant to adjournment at 1.30 o'clock p. m.

Before: Examiner J. J. Dunham.

Appearances: As heretofore noted.

JOHN ALBERT MARCERON was called as a witness on behalf of the respondent, and after having been first duly sworn, testified as follows:

Direct examination by Mr. AHALT:

Question. Mr. Marceron, state your full name and occupation, please.

Answer. John Albert Marceron, shade cutter, with Hooper & Klesner.

262 Question. You are employed by Hooper & Klesner?

Answer. Yes, sir.

Question. Where are they located at the present time, Mr. Marceron?

Answer. 929 H Street NW.

Question. How long have you been employed by them?

Answer. Three years.

Question. Where were you employed prior to that time?

Answer. I was with Hecht & Co. before I came with them.

Question. In what occupation?

Answer. As a collector.

Question. Did you ever engage in the shade-cutting business prior to the time you were employed by Hooper & Klesner?

Answer. Yes, sir; with S. Kann Sons Co.

Question. About what years were you with S. Kann Sons Co.?

Answer. That was about eight years ago. Then I was with A. Kleeblat, Eleventh and H Streets NE.

Question. How long have you known either Mr. Hooper or Mr. Klesner; Harry S. Hooper, or Mr. Alfred Klesner?

Answer. I have known Mr. Hooper, I guess, since the time I was at Kann's. It was maybe eight years; between eight and ten years, that I have known Mr. Hooper.

Question. During the time that you were at Kann's were Hooper & Klesner in business trading under that firm name?

Answer. No, sir. I think Mr. Hooper was in for himself at that time, as far as I know.

Question. Where was Mr. Hooper's business located at that time; do you know?

Answer. I am not positive, but I think he was on Eleventh Street.

Question. 721 Eleventh Street?

Answer. I do not remember the number.

Question. While you were with S. Kann Sons Co. as a shade cutter, did you have any occasion to cut shades to fill orders for Mr. Hooper or for Hooper & Klesner?

Answer. Yes, sir; Mr. Hooper.

Question. Was that frequent or not?

Answer. Well, maybe two or three times a month. He would bring orders in and I would make them up for him.

Question. I believe you said you had been with Hooper & Klesner about three years?

Answer. About three years; yes, sir.

Question. Where were they located when you went with them?

Answer. Twelfth and H Street NW.

Question. In what business were they engaged at the time you went with them?

Answer. Why, in the painting and wall-papering business, and window shades.

Question. Had they been, to your knowledge, conducting the business of manufacturing shades prior to the time you were there?

Answer. Yes; we made shades all the while; yes, sir.

Question. I say, prior to the time you were there, do you know whether they conducted the business of manufacturing shades?

Answer. Yes; they made shades before I was there.

963 Question. Mr. Marceron, did Mr. Hooper or Mr. Klesner give you any instructions when you came there relative to any inquiries that might be made as to whether that was The Shade Shop?

Answer. Well, I always had been instructed to give the name to a party over the phone as "Shade Shop."

Question. When were those instructions given to you, first?

Answer. Very soon after I came.

Question. Have you followed those instructions?

Answer. Yes, sir.

Question. Have you ever had any occasion when anyone called over the telephone and asked if it was The Shade Shop?

Answer. Why, occasionally once in awhile, but then, I would make it clear that it was Hooper & Klesner's shade shop, and not The Shade Shop. I made it clear that The Shade Shop was a different address.

Question. I believe you have practically the control of the shade business at the firm of Hooper & Klesner, have you not?

Answer. Yes, sir.

Question. Your duties include that of answering the telephone and taking orders, or taking orders from customers who might call at the store?

Answer. Yes. I occasionally answered the phone, and of course, go out and look up the work on the outside, mostly.

Question. State whether or not if any inquiry comes over the phone or by anyone calling in person at the store it is the custom of the firm to call you to have you to take the order, or do what is necessary in connection with it?

Answer. In special cases there, where an estimate is required on probably a certain width of goods or goods which is not carried in stock, why, I will attend to them, then.

Question. Do you have a telephone extension back to your part of the shade-making business from the main telephone?

Answer. Yes, sir.

Question. Is that extension used for the purpose of connecting you up with persons who inquire by the telephone for shades?

Answer. Yes, sir.

Question. Now, Mr. Marceron, will you please state whether or not during the time you have been with Hooper & Klesner any persons have called at the store inquiring about shades who made inquiry as to whether or not this was The Shade Shop or the place of Mr. Sammons?

Answer. Well, yes; they have come in when we were up at the other place, the old location at Twelfth and H Streets; but then they were always informed that it was not The Shade Shop.

Question. Do you mean when you say they were always informed, that you always informed them to that effect?

Answer. When I—yes—I, myself, personally; yes.

Question. Did you ever hear any of the other employees or members of the firm inform persons who made such inquiries that this was not The Shade Shop?

Answer. Yes, sir; they have told them that it was not The Shade Shop.

Question. You heard them so inform them?

264 Answer. Yes, sir.

Question. Do you have any recollection of an order ever having been placed there for shades by Mr. or Mrs. Bowie, a matter of a couple of years ago, as I recall the time? I am speaking of the Mr. Bowie who is connected with the H. L. Rust Co.

Answer. I can not remember that Bowie. I know of one Bowie outside of that, Kensington, Md., who always came in to have work done.

Question. You mean one of your regular customers?

Answer. She seemed to be a regular customer. The other one with Rust, I can not remember.

Question. Do you recall a transaction had by the firm with a Mr. Shelton about a year ago for some shades at 33 Quincy Place?

Answer. I recall making an order for the gentleman, but I do not remember seeing him personally.

Question. Do you recall whether or not you waited on him when he called at the store?

Answer. No, sir.

Question. If you had waited on him, having filled the order, as you have testified, do you think you would have recalled the name, in connection with the transaction?

Answer. Yes; I generally remember a person by the name if I have waited on him, but in that case, I do not remember seeing the party. I just made up the shades for him after he gave the order.

Question. Did you ever receive a complaint about Mr. Shelton becoming confused in placing the order, thinking that he had placed the order with The Shade Shop?

Answer. No, sir.

Question. State whether or not you recall having any transaction with a colored man by the name of Wills, who represented the Dewey Hotel, about a year ago, I think you stated?

Answer. Yes; that gentleman came in and asked me to go up to the Dewey Hotel to give him an estimate on shades.

Question. Was this a colored gentleman?

Answer. A big colored man. I know he is the head porter.

Question. Do you know him by name?

Answer. No, I do not know his name. I never did.

Question. Did you ever see him any place before?
Answer. I knew him while I was at Kann's.
Question. While you were at Kann's?
Answer. Yes.
Question. Did he purchase shades from Kann's while you were there?
Answer. Yes, sir.
Question. And did S. Kann Sons Co. furnish him any shades for the Dewey Hotel?
Answer. No; very few.
Question. But you recall this man and knew him as the porter?
Answer. Yes; Dewey Hotel.
Question. Now, state what he did when he came in.
Answer. Well, he came in and just made a remark, "Well, I see you are around. I want you to come up and give me an estimate on shades at the Dewey Hotel." So I went up the next day and gave an estimate to the manager there at the desk and I got
965 the order, and he told me to go ahead with it, and I put the shades up two or three days later.
Question. Who gave you the order, now?
Answer. The manager.
Question. Do you remember the manager's name?
Answer. No, sir.
Question. Where did you find him?
Answer. At the office.
Question. Did you report to him your estimate to make up the shades?
Answer. Yes, sir.
Question. Did they make any deposit on the shades at that time?
Answer. No, sir.
Question. I understand that you filled that order?
Answer. Yes, sir.
Question. Did you see this colored gentleman any more?
Answer. I do not think he has been in——
Question. I mean now in connection with that transaction.
Answer. I may have passed him in the hall when I got through with the job or something like that.
Question. He never had any more to do with that transaction?
Answer. No more than this, to have the shades put up there.
Question. To whom did you present the bill?
Answer. To the same gentleman, the manager.
Question. Did you present that bill in person or how did you present it?
Answer. Yes, sir; in person. I took the bill right along with me and collected.
Question. When you hung the shades?
Answer. Yes, sir.

Question. What if anything did he have to say about the bill, or the fact that it was Hooper & Klesner's bill, or anything else in connection with it?

Answer. He made no remarks. Just paid me and had me receipt the bill and I left.

Question. Mr. Marceron, I want you to try to state the facts as near as you recall them, as to just what conversation took place between you and this colored gentleman when he first came to the store and asked you to go up to the Dewey Hotel and make an estimate on shades.

Answer. He came in and he says, "Why hello; you down here?"—I had known him before. He says, "Well, I want you to go up and give me an estimate on shades." Well, I went up, I think the next day, and gave the estimate——

Question. Was there any other conversation with him that you recall?

Answer. No, sir.

Question. State whether or not he asked you if this was Mr. Sammons's place.

Answer. Positively no.

Question. Did he ask you if Mr. Sammons was in?

Answer. No, sir.

Question. State whether or not he asked you if it was The Shade Shop?

266 Answer. No, sir.

Question. He made no inquiry as to whose place it was?

Answer. Not in the least.

Question. And merely greeted you and asked you to come up and give him an estimate?

Mr. HAWKINS. I object to that as being extremely leading.

Mr. AHALT. He has already testified.

Question (by Mr. AHALT). Have any orders been placed with Hooper & Klesner since that time for shades by the Dewey Hotel or by this colored gentleman?

Answer. No, sir; not to my knowledge.

Question. Did either this colored gentleman or the manager of the hotel at any time complain to you relative to having placed the order and you having filled it rather than The Shade Shop?

Answer. No, sir.

Question. Mr. Marceron, during the time that you have been with Hooper & Klesner, what has been their principal business?

Answer. The main part of their business is painting; the painting end.

Question. What would come next in the order, in your estimation?

Answer. I think wall papering.

Question. And shades would be last?

Answer. Shades would be next, you see.

Question. State whether or not you recall any transaction that you had with a Mr. Howard Etchinson, whose office, I believe, is in the Davidson Building, and who, in connection with an order for shades for a Mrs. or Mr. Pollock——

Answer. Mrs. Pollock came into the store and asked me to come out and measure a house for her shades and give her an estimate. I went out to the house and while measuring the shades I met this Mr. Etchinson at the house, and he seemed to be surprised that Mr. Sammons was not doing the work and says, "Sammons always does the work for them." Well, I said, "No," that I was from Hooper & Klesner's there, and, of course, he recognized right away—I said, "I have got orders from Mrs. Pollock to come out and give her an estimate on the Dupjex—no, it was white linen——

Question. Well, that don't matter. Go ahead.

Answer. Well, shades, anyway, and he seemed to make just a remark that he seemed to think a different color would be better for the house. That is all the conversation we really had.

Question. Did you collect that bill?

Answer. Yes, sir.

Question. State when you collected that bill what took place in the course of the collection of it.

Answer. I collected the bill, probably six weeks or two months after the shades were up, from Mr. Etchinson.

Question. Where did you see Mr. Etchinson, and what did you have to say?

Answer. I went to his house one morning.

Question. What time in the morning, do you remember?

Answer. About 8 o'clock.

Question. Then what took place?

267 Answer. I told him that I had the bill for the shades which I would like to have a check for and he took me over to look the job over and then he made me out a check that morning for the shades.

Question. Did he object to paying the bill?

Answer. No; no, sir.

Question. Do you recall any other conversation you had with him?

Answer. Not pertaining to the job. It was only in regard to his house out there, as to how much he would pay for his house, and all, and what a nice house it was, and all; nothing pertaining to the work.

Question. At the time he paid this bill, state whether or not he objected to paying the bill of Hooper & Klesner's for those shades.

Answer. No, he did not.

Question. Mr. Marceron, I will ask you to state some of the principal firms or persons for whom the firm of Hooper & Klesner does shade work and of which you have personal knowledge.

Answer. Boss & Phelps.

Question. They are real-estate brokers, I believe, are they not?

Answer. Yes, sir; real-estate people. Our trade is mostly a private trade. We do not do very much real-estate work. Only this morning I got a little message from Mr. Blessing over the phone, 324 Southern Building.

Question. What message did you get from Mr. Blessing?

Answer. This gentleman, he has been having work done by Mr. Sammons and us at the same time.

Question. Did he tell you that?

Answer. Yes, sir; and he calls me up this morning and gave me the order for the upper part of his building for the shades, and he tells me that, of course, he had the other part shaded by Mr. Sammons just six months ago.

Question. What, if anything, did you say to him about this not being The Shade Shop?

Answer. Well, he understands that we are Hooper & Klesner when he calls up.

Question. He knows that?

Answer. Yes, sir; he knows the difference right away, for the reason that he has dealt with Mr. Sammons and us at the same time. He gets estimates from both of us.

Question. Have you ever done business with Mr. Blessing before in the way of making up shades.

Answer. I have given three or four estimates before, but this seems to be the first order that I have gotten.

Question. How long back would you say, if you can approximate, was the first estimate that you were requested to give by Mr. Blessing?

Answer. Probably upwards of a year or so ago.

Question. You think it would be two years ago?

Answer. No; I do not think it is more than a year ago.

Question. State whether or not the firm of Hooper & Klesner ever estimates or furnishes estimates on or furnishes shades for the firm of Weaver Bros., real-estate brokers?

Answer. Yes, sir; we have furnished shades for them.

Question. Do they usually request estimates or place orders?

268 Answer. They generally give the order without an estimate.

Question. Mr. Marceron, on what percentage of the shades that are made up and hung by the firm of Hooper & Klesner do you personally do the actual work?

Answer. I do all of the work.

Question. You do all of the cutting and making up of the shades, and you hang all the shades?

Answer. Yes, sir; hang all of them.

Question. State whether or not the firm of Hooper & Klesner estimates for [illegible] furnishes shades to the firm of Shannon & Lucha real-estate br[illegible]

Answer. No, [illegible]

Question. State whether or not they furnish estimates and shades for the Waggenhoust estate?

Answer. Yes, sir.

Question. State whether or not they furnish estimates and shades for the firm of Stone & Fairfax.

Answer. No, sir.

Question. State whether or not they furnish estimates and shades for the the firm of Moore & Hill.

Answer. No, sir.

Question. State whether or not they furnish estimates and shades for the firm of N. L. Sansbury Co.?

Answer. No, sir.

Question. What other large customers, if any, as you might term them, deal with the firm of Hooper & Klesner in shades, other than those you have mentioned?

Answer. Why, we do work for the Farragut apartment house, but as I said, mostly it is a private trade, and we do not cater to real-estate work.

Question. Mr. Marceron, state, if you can, how many times, approximately, you have had persons make inquiry of you while with the firm of Hooper & Klesner, as to whether or not this was The Shade Shop, or Mr. Sammons's place of business.

Answer. Well, when we were on the corner of Twelfth and H Streets, you speak of?

Question. Yes.

Answer. We had maybe one or two inquiries in a month, that I would answer, that I would get hold of myself, and I would make it clear to them that it was not The Shade Shop, then.

Question. What would be their response to such inquiries as were made of you?

Answer. I would say, no, it was not The Shade Shop, Mr. Sammons's place, but that it was Hooper & Klesner's shade shop. I often directed them to Mr. Sammon's place.

Question. During the time you have been with Hooper & Klesner please state whether you have, or they have, ever used a letterhead or billhead in connection with their business which contained the words "Shade Shop," or "The Shade Shop"?

Answer. "Shade Shop," only.

Question. On the stationery?

Answer. No.

Question. Where was it?

Answer. Just on the glass of the window.

269 Question. Have you ever maintained those words on the billheads or letterheads?

Answer Answer. No, sir; they have just the name of "Hooper & Klesner."

Question. Who makes up these bills for shades?

Answer. I make up most of them and have them sent out.

Question. Do you recall the time that The Shade Shop was located at 733 Twelfth Street?

Answer. Yes, sir.

Question. What business was conducted at 722 Twelfth Street?

Answer. The Shade Shop.

Question. Was any other business conducted on those premises?

Answer. They used to have a paper hanger in there with the people.

Question. State whether or not the words "Shade Shop," or "The Shade Shop" appears on any advertising matter or signs on the building at 929 H Street now occupied by the firm of Hooper & Klesner?

Answer. No, sir.

Mr. AHALT. That is all.

Cross-examination by Mr. HAWKINS:

Question. Mr. Marceron, as I understand what you said to Mr. Ahalt, you do all of the window-shade business for Hooper & Klesner?

Answer. Yes, sir.

Question. How many men have you got working under you?

Answer. None.

Question. You are the only man?

Answer. I am the only one.

Question. So you are the "shade shop"?

Answer. Yes, sir.

Question. What proportion of the time are you in the store, and what proportion of the time are you out of the store?

Answer. I suppose half of the time in and half of the time out.

Question. Now, when you are away from the store, who looks after the customers?

Answer. The young lady there at the store takes orders.

Question. That is Miss Williamson, is it not?

Answer. Miss Williamson.

Question. Did I understand you to say in your testimony to Mr. Ahalt that you wanted the commission to understand that you denied that Mr. Shelton and Mrs. Bowie had ever been in the store to place an order?

Answer. Personally, I have never seen Mr. Shelton or Mrs. or Mr. Bowie that he speaks of, with Rust, I think. I have never seen them, personally.

Question. Do you do any of the Rust business?

Answer. No, sir.

Question. Now, Mr. Marceron, Mrs. Bowie and Mr. Bowie and Mr. Shelton all testified here as to having been in the store. Do you want the commission to understand that you deny that they were there?

Answer. No; I do not deny they were in the store.

Question. You do not know anything about it?

270 Answer. No, sir.

Question. Now, this colored man by the name of Wills, when was it that you talked to him?

Answer. Wills; you mean the head porter?

Question. The one that you testified to just now.

Answer. The Dewey Hotel man?

Question. The one you were talking about to Mr. Ahalt. You only spoke to one colored man.

Answer. The only one I know of—I do not know his name, but he was into the store, and he asked me to come up and——

Question. Wait a minute——

Mr. AHALT. Let him answer.

Question (by Mr. HAWKINS). I asked you when he was in the store.

Answer. Every bit of two and a half years ago.

Question. Every bit of two and a half years ago?

Answer. Yes, sir.

Question. Do you think it was under two and one-half years ago, or more than two and one-half years ago?

Answer. I can not give you the exact date, but to the best of my knowledge it is about two and a half years ago.

Question. How do you place it?

Answer. Sir?

Question. What places it in your mind? Anything in particular?

Answer. No; just judging back from seasons when he was in. That was two or two and a half years ago, to the best of my knowledge, when he was in.

Question. You recall that the man that paid the bill was Mr. Fenwick of the Dewey Hotel; the manager?

Answer. I did not know his name.

Question. Do you know it now? Do you know whether it was Mr. Fenwick, or not?

Answer. I never knew him by name, but this colored man seen me there and told me to ask for the manager, and I went up to the office, and asked for the manager, but I did not know what his name was at the time.

Question. I am asking you if you know now?

Answer. Fenwick—yes, that used to be the manager of the Dewey Hotel.

Question. Was it Mr. Fenwick that you talked with when you went up there?

Answer. It must have been him, if I saw the manager.

Question. Was it or was it not? You were there and I was not.

Answer. I do not know the gentleman, personally.

Question. You do all of the collecting, too, for the shade business, don't you?

Answer. Yes, sir.

Question. When you went up to collect that bill from Mr. Etchinson, do you recall that Mr. Etchinson was angry and put out at your coming up at six or half-past six, or early in the morning, or whatever hour it was?

Answer. No, sir.

Question. You have no recollection of his having cussed you out?

271 Answer. Not at all.

Question. He testified that he did. Then, you want to say that Mr. Etchinson did not use any profanity toward you and did not cuss you out?

Answer. No, sir.

Question. When he said that; he was mistaken? Could you give us the description of this man at the Dewey Hotel that paid the bill that you said was the proprietor and manager?

Answer. No, sir; I can not describe him.

Mr. AHALT. I submit that is irrelevant.

Question (by Mr. HAWKINS). You can not describe him at all?

Answer. No, sir.

Question. Was he a white man?

Answer. Sure; yes, sir.

Question. You can describe that much, then. Can you tell us anything else beside the fact that he was a white man.

Answer. He was in the office that a manager generally is, and that is as far as I know.

Question. He was a white man. Do you recall anything else about him?

Answer. No, sir.

Question. But you do recall the porter very distinctly?

Answer. Yes, sir.

Question. How old a man do you think the porter was?

Answer. He was about 35 years old, to my knowledge.

Question. Did he have a mustache or not?

Answer. No; I think he was smooth-faced.

Question. Now, you said that you always told everybody that came into Hooper & Klesner's and asked for The Shade Shop where to go. Now, what is The Shade Shop?

Mr. AHALT. I object to that question as not representing what the witness testified to. He did not say that he always said so.

Examiner DUNHAM. The objection is in and you may answer now, if you can.

The WITNESS. Yes; I have told them where The Shade Shop was located.

Question (by Mr. HAWKINS). Well, where is it? What is The Shade Shop?

Answer. Mr. Sammons's place of business.

Question. Certainly. How long have you known Mr. Sammons?

Answer. Only since I have been with Hooper & Klesner.

Question. Did you ever know him before that at all?

Answer. No, sir.

Question. Did you ever know of The Shade Shop before that?

Answer. No, sir.

Question. Who gave you these instructions?

Answer. Mr. Hooper and Mr. Klesner both impressed upon me to make——

Question. Just a minute. I asked you who. We will come to the conversation later.

Mr. AHALT. Let him explain. He has stated it. Now, he is explaining.

The WITNESS. Both of them gave instructions.

272 Question (by Mr. HAWKINS). Now, then, tell us what the instructions were.

Answer. If anyone came in—when I first went to work—they told me to impress upon anyone that asked if it was The Shade Shop, that it was not The Shade Shop; that The Shade Shop was down the street below where we were located, and that is what I always told people.

Question. What else did they say at that time they were giving you these instructions?

Answer. The people, or Mr. Hooper?

Question. Mr. Hooper and Mr. Klesner. What else did they say?

Answer. That was all the instructions they give me.

Question. When was it that they gave you those instructions?

Answer. Shortly after I went to work with them.

Question. Where was it they gave them? When they gave you those instructions, where were you?

Answer. In the store, working.

Question. Who else was present?

Answer. Well, I can not remember just the day; just the working force, I suppose, was around. They were all there. I do not know of any particular day or what the date was.

Question. What time of the day was it?

Answer. That I can not remember. They had told me once or twice, and explained it to me when I first went to work there.

Question. Now, if anybody asked for Shade Shop, what would you tell them?

Answer. The Shade Shop?

Question. No, "Shade Shop".

Answer. Asked for "Shade Shop"?

Question. Yes.

Answer. I would say, "The Shade Shop", which is Mr. Sammons's place—where it was located, but "Shade Shop", I would say, if they were looking for Hooper & Klesner's shade shop, that this was Hooper & Klesner's shade shop, which is a shade shop as well.

Question. Did you have instructions to tell them that?

Answer. No, sir.

Question. You did that of your own initiative?
Answer. Yes, sir.
Question. How old a man would you say that the proprietor of the Dewey Hotel was?
Answer. I imagine he was around 35 years old. He was a fairly good-sized colored fellow.
Question. A good-sized colored fellow?
Answer. A good-sized colored fellow.
Question. You think now that he was a colored man?
Answer. I know he is a colored man.
Mr. AHALT. I do not think the witness understands the question.
Question (by Mr. HAWKINS). I am talking about the manager.
Answer. The what?
Question. The manager.
Answer. I understood you to say this man Wills.
Question. No, I said the manager.
273 Answer. Oh, the manager.
Question. How old a man do you think the manager was, that you talked with?
Answer. I do not remember clear enough to give you an idea as to his age. As I say, it has been some time ago.
Mr. HAWKINS. I think that is all.

Redirect examination by Mr. AHALT:

Question. That was the only transaction you ever had with that particular gentleman, was it not?
Answer. With the Dewey Hotel gentleman; yes, sir.
Question. You never paid any particular attention to what he looked like, or how you might describe him?
Answer. No; I did not look to see what kind of a man he was. After I did the work I came out.

Recross-examination by Mr. HAWKINS:

Question. Fifty per cent of your time you say you were outside, and 50 per cent of your time you were in. When you were in, what were your duties?
Answer. Making the shades.
Question. You were back in the manufacturing department?
Answer. Yes, sir; making the shades.
Question. So it would be perfectly possible for customers to come in without ever seeing you or talking with you?
Answer. Yes, sir.
Question. You did not wait on all the customers, the shade customers?
Answer. No, sir.
Question. Even when you were in?
Answer. No, sir.
Mr. HAWKINS. That is all.
(Witness excused.)

Mr. AHALT. I ask that this paper that I have in my hand be marked Respondent's Exhibit, for identification, No. 12.

(The paper referred to was thereupon marked for identification "Respondent's Exhibit No. 12, Witness Ahalt.")

Mr. AHALT. This Respondent's Exhibit No. 12, marked for identification, is a certified copy of Equity Cause No. 33946, in the Supreme Court of the District of Columbia, as the docket entries appear in connection with said cause on the dockets of said court.

I offer this in evidence.

Mr. HAWKINS. Well, I assume that Mr. Ahalt is now going to prove his plea of res judicata. I object to this as being incompetent. The paper which is marked as Respondent's Exhibit No. 12 seems to be certified by Morgan H. Beach as a true copy of the entries in the docket of the Supreme Court of the District of Columbia of a certain suit between Mr. Sammons and Messrs. Hooper & Klesner. I object to it for the reason that you can not prove res judicata by the docket entries and you must bring the original pleadings or certified copies of them in, and also the entry book of final entry under whatever name such book is given in the jurisdiction to show what the final disposition of the case was by
274 the court. By that book, I mean the final order book, and this respondent's Exhibit No. 12 is nothing but a copy of the notations made in the court's docket. You can not prove res judicata with that.

Mr. AHALT. For the record I will state that I did not expect that this particular paper, without additional evidence, would prove res judicata.

Mr. HAWKINS. I make the further objection that this Exhibit 12, a true copy of the notations in the court's docket, shows that there never was any final determination of the suit, but that the same was dismissed by the attorneys.

Mr. AHALT. It will speak for itself.

Examiner DUNHAM. Gentlemen, I wish to make this statement just now. The Federal Trade Commission requests that where statements are made, either in support of the objection, or resisting it, that the shortest you make the objection, or the resisting of the objection, the more desirable it will be, and that any arguments will not appear in the record. I call your attention to that so that we will not have an unnecessarily large record.

(Discussion off the record.)

C. R. AHALT was called as a witness on behalf of the respondent, and after having been first duly sworn, testified as follows:

Direct examination:

Mr. HAWKINS. I want the record to show that I object to Mr. Ahalt laying the foundation for secondary proof, as I understand from his statements he intends to, for the reason that he is not custodian of the supposed missing documents or papers, and therefore is not the proper party to lay the foundation.

The WITNESS. I offer Respondent's Exhibit No. 12 in evidence.

(The paper so offered and identified as "Respondent's Exhibit No. 12, Witness Ahalt," was received in evidence, and the same is forwarded herewith.)

The WITNESS. Mr. Examiner, and gentlemen, I wish to state in connection with this Respondent's Exhibit No. 12, and Respondent's Exhibit No. 7, that it is with considerable reluctance that I feel it necessary, under the circumstances, to take the stand as a witness in view of the fact that I appear here as counsel, but I think when I have concluded I can show the commission that I know of no one who possesses the same knowledge of the facts that I propose to relate and I will only touch upon such facts as I have personally observed.

I want to say that following the time of the filing and service of this complaint on respondent and some time between the 10th and 18th of January, 1921, I visited the file room of the clerk's office for the Supreme Court of the District of Columbia and examined all of the papers contained in the jacket in Equity Cause No. 33946; that at that time a bill of complaint and a rule to show cause were found in said jacket and papers in which William Stokes Sammons, trading as The Shade Shop, was named as plaintiff, and Harry S. Hooper and Alfred Klesner, trading as Shade Shop, Hooper & Klesner, were named defendants; that I read this bill of complaint and the rule to show cause why the defendants in that case——

275 Mr. HAWKINS. I want to object right there for the reason that——

The WITNESS. Well, I will go ahead and I will put it in later after I have laid a little more foundation. I will withdraw that part of the statement; that last part, down to the point where I found a bill of complaint, such as I have described.

Mr. HAWKINS. I object to the witness' statement as to what was in a written document, paper, as the certified copy would be the best evidence.

The WITNESS. Read the last part of that answer.

(Thereupon, the reporter read the last part of the witness' statement, beginning with, "—that I read this bill of complaint and the rule to show cause why the defendants in that case——".)

The WITNESS. Make the last part of that answer read: "that I read this bill of complaint and the rule to show cause filed in that case."

Mr. HAWKINS. I want to object to his testifying to anything whatsoever concerning what was in that bill of complaint.

The WITNESS. I have not testified as to anything yet as to what was in it.

That I returned to my office, and prepared an answer between that date and January 18, 1921, which was filed in this case; that between the dates of February 10 and 18, as near as I can recall, at about the 10th or 11th of February, I again visited the file room of the clerk's office, of the said court, and again examined the papers

contained in the jacket, relating to Equity Cause No. 33946, and at that time a bill of complaint, with the same caption and same parties in it, I identified as being the same one just referred to, was found in that jacket; that I inquired about having true copies made by the clerk's office of said court, and returned to my office; that on February 16 or 17, 1921, a matter of a day or so before this cause before the commission was scheduled for hearing, I again visited the file room of the clerk's office for said Supreme Court of the District of Columbia and obtained the jacket pertaining to Equity Cause No. 33946, for the purpose of instructing the clerk's office to prepare certified copies of the bill of complaint, the rule to show cause, the answer of Hooper & Klesner, and the order discharging the rule. At this time the bill of complaint, which I had previously examined on the two occasions just referred to, was missing from the jacket.

Mr. HAWKINS. I will object there to the witness testifying any further for the reason that he is not the proper custodian of the papers in question. I also move to strike out all of his previous testimony as being incompetent to lay the foundation for secondary proof of a supposed missing document.

The WITNESS. That inquiry was made of employes in said file room and diligent search was made, both by myself and several of the employes of said file room, and the bill of complaint and rule to show cause could not be found. Since that time I have made several inquiries of said clerks of said file room, and no information could be obtained by me as to the present whereabouts of said bill of complaint and rule to show cause; that I have made inquiry of counsel who appeared in that cause for the plaintiff, with a view of obtaining their office copy of said bill of complaint and rule
276 to show cause, Messrs. Toomey & Toomey, attorneys at law, of this city, and was informed——

Mr. HAWKINS. I object to his testifying as to what they informed him, as being the purest hearsay.

The WITNESS. There is a lot of hearsay in this record, Mr. Hawkins.

Mr. HAWKINS. I am going to object to it for the reason that Messrs. Toomey & Toomey are within the jurisdiction of this commission to testify themselves.

The WITNESS (continuing statement). ——by them that they did not have their office copy and that their file in connection with this case had been destroyed by them. I have made inquiries of my client, Mr. Klesner, for the copy of the rule, which was served upon him, and he is unable to produce the same.

Mr. HAWKINS. I object to his testifying to that, as his client is here in the room.

The WITNESS. As counsel for the respondent, realizing that he would be called upon to produce the best evidence as to the contents of said bill of complaint and that the paper—writing—itself, was the best

evidence, I have made diligent inquiry and exhausted every means to my knowledge which might disclose the present whereabouts of said bill of complaint and rule to show cause and in an effort to produce for the consideration of this commission the best evidence possible. Having exhausted all means, I wish to state that, to the best of my recollection, from the two examinations that I made of the bill of complaint and rule to show cause, and which examinations were careful, because of the relevancy of the basis of the complaint filed in this particular cause by this commission, I made a careful examination of the contents of said bill of complaint and rule to show cause. To the best of my recollection, the bill of complaint did, in the main——

Mr. HAWKINS. I object to his testifying anything as to what his recollection is as to what was contained in that bill of complaint.

The WITNESS (continuing statement). ——seek to enjoin the defendants from the use of the words "Shade Shop, Hooper & Klesner," in connection with their business of wall papers, paper hanging, and painting. That said bill of complaint set up in substance practically all the facts contained in the bill of complaint filed in this cause before the commission—that is, the bill of complaint charged the defendants with having practiced methods of unfair competition in that they were using the name "Shade Shop, Hooper & Klesner," for the purpose of misleading and deceiving the public into the belief that they were dealing with The Shade Shop. It also recited the fact that Mr. Sammons had been engaged in the window-shade business and had traded for a long period of time under the trade name of "The Shade Shop." Said bill of complaint contended on behalf of the plaintiff that he had the right to the use of the trade name, "The Shade Shop," to the exclusion of any other person, having adopted it and used it as his trade name and having continuously used the same without interruption for a long period of time prior to the date of the filing of said bill of complaint. The prayer of said bill of complaint was, in effect,
277 that the defendants be enjoined from the use of the name "Shade Shop, Hooper & Klesner," and further, from practicing unfair methods of competition referred to in said bill of complaint.

Mr. HAWKINS. I now move to strike out all of Mr. Ahalt's testimony for the reason that it is incompetent, because there has been no showing on the part of the respondent that he has attempted to produce the clerk of the court, who is the custodian of the alleged missing bill of complaint, or any of the employees of his office, or anyone who is in charge of these files, and further, because the testimony of Mr. Ahalt is purely hearsay and does not lay the foundation for secondary proof.

The WITNESS. Cross-examine.

Cross-examination by Mr. HAWKINS:

Question. Is that all there was in this bill of complaint Mr. Ahalt?

Answer. That is the best of my recollection of what was in the bill of complaint. Of course, I qualify that by saying that I have not

attempted to give the exact words or all of the words that were contained, but the sum and substance of that bill of complaint was, to the best of my recollection, as I have stated it.

Mr. HAWKINS. That is all.

The WITNESS. I now offer in evidence Respondent's Exhibit No. 7.

Mr. HAWKINS. I object to the introduction of Respondent's Exhibit No. 7 for the reason that it fails to show first, the identity of the thing sued for; second, the identity of the cause of action; third, the identity of the persons and parties to the action and, fourth, the identity of the quality in the persons for or against whom the claim was made. I further object to Respondent's Exhibit No. 7 for the reason that it wholly fails to show the final determination of the cause and only show a dismissal of a rule to show cause. I further object to it for the reason that the order for such preliminary relief does not finally determine the rights of the parties to the action and its only purpose and effect is to preserve the existing state of things until the case has been fully heard by the court and the entry of a final decree therein.

I am going to further object to the affidavit in this Respondent's Exhibit No. 7 being introduced. This is the affidavit of Luther L. Derrick. I object to it because it is not a part of the pleadings as shown on the face of the answer in Respondent's Exhibit No. 7.

Examiner DUNHAM. The paper will be received in evidence. The paper so offered and identified as "Respondent's Exhibit No. 7, Witness Derrick," was received in evidence, and the same is forwarded herewith.)

Witness excused.

ALFRED KLESNER was called as a witness on behalf of the respondent, and after having been first duly sworn, testified as follows:

Direct examination by Mr. AHALT:

Question. Mr. Klesner, state your full name, occupation, and address.

Answer. Alfred Klesner, contracting painter, paper hanger, and manufacturer of window shades; address, 929 H Street NW.

Question. You are the respondent in this suit, are you not?

278 Answer. I am.

Question. And you trade and do business under what firm name, please?

Answer. Hooper & Klesner.

Question. Will you state whether or not you do business under the firm name and style of "Shade Shop, Hooper & Klesner"?

Mr. HAWKINS. I will object to that as being extremely leading and insist that the witness ought to be permitted to tell his story in his own way.

Mr. AHALT. I will withdraw the question.

Question (by Mr. AHALT). The business you have referred to as being your occupation, will you state whether or not that is the business of the firm of Hooper & Klesner, under which trade name you do business?

Answer. It is.

Question. Mr. Klesner, how long have you been engaged in the business of paper hanging and the window-shade business?

Answer. Since the spring of 1909, in Washington.

Question. State under what circumstances and under what name, if any, you first engaged in that business.

Answer. Why, in the spring of 1909 I went into partnership with Harry S. Hooper in Anacostia, D. C., under the name and style of Hooper & Klesner, for the purpose of conducting a general painting and wall-papering and window-shade business.

Question. How long did you continue in business in Anacostia?

Answer. About a year and a half.

Question. Where did you move to from there?

Answer. We moved to 3202 Mount Pleasant Street, for a short time.

Question. Under what name did you do business there?

Answer. The same as before mentioned.

Question. What was it?

Answer. Hooper & Klesner.

Question. Where did you go after leaving Mount Pleasant Street?

Answer. To No. 721 Eleventh Street NW.

Question. And under what name did you trade and do business there.

Answer. Hooper & Klesner.

Question. How long were you on Eleventh Street—721?

Answer. Until the 15th of April, 1914.

Question. Now, Mr. Klesner, state to what extent and how you conducted the window-shade business while on Eleventh Street.

Answer. Why, we usually take orders from our customers that we did paper hanging and painting for, and Mr. Hooper, before my time with him, had been in the habit of going to S. Kann Sons & Co., at Eighth and Market Streets NW., and had them make up shades for him. He would take the dimensions and bring them there and get the shades made and hang them. They would charge us a wholesale price, and we would add a profit for our trouble of measuring and hanging them, and so forth.

Question. Did you have any occasion to do business with Mr. Sammons while on Eleventh Street?

Answer. We did.

Question. What business did you transact with him?

279 Answer. Mr. Sammons came—approached us some time after we moved—after he moved on Eleventh Street, and I think it was in 1911, and told us he was making shades for other

paper hangers the same as we were now getting at Kann's, and we would give him our business on the same terms, and, being that he was so close by, we thought it was a good scheme, and we had him do it thereafter.

Question. You would place orders with Mr. Sammons, and he would make these shades up for you?

Answer. Yes; sometimes we would. He would bring the shades over to us and we would hang them ourselves, and other times, we would tell him to go and hang them.

Question. Which would occur more frequently, cases where you would hang the shades or cases where you would give him the order and he would execute the order and hang the shades?

Answer. I think that we hung them most of the time ourselves.

Question. Who did Mr. Sammons bill for these shades he made up?

Answer. He billed us, Hooper & Klesner.

Question. And you billed the customer?

Answer. Yes, sir.

Question. What signs did you have on the premises at 721 Eleventh Street?

Answer. Let us see. We had a sign right above our window, "Hooper & Klesner," and on a panel, a brick panel on each side of the window, extending from that top sign down toward the ground, we had a sign on one side, "Wall Papers," and on the other side "Painters."

Question. Where did you move to from 721 Eleventh Street?

Answer. Southeast corner of Twelfth and H, known as No. 1116 H Street, and 741 Twelfth Street, one big store with two entrances.

Question. State how you came to make that change.

Answer. Why, Mr. Sammons approached us some time in April, the early part of April, 1914, and suggested that we take that store up there together with him. We knew it was a big rent and so did he and he thought that by taking the store in conjunction that the rent would not be so much; so much larger than the one we were paying at 721 Eleventh Street?

Question. What were you paying at 721 Eleventh Street?

Answer. $27.50.

Question. What was the total rent of the storeroom at Twelfth and H Streets?

Answer. It was for the first two years and four months, $1,000 a year, or $83.33 a month.

Question. Continue with whatever arrangement you had.

Answer. And for the succeeding year after that it was $100 a month, or $1,200 a year. That was all the lease amounted to.

Question. What arrangements, if any, did you have with Mr. Sammons about the occupation of the store?

Answer. Why, whatever terms we made with Mr. Waggenhoust, that he would make similar terms with us to pay 50–50 on the store, and we talked over what he was to have, and what we were to have; which part we would have, and which part he was to have.

Question. Which parts were you to have, respectively?

280 Answer. We were to occupy the front part of the store, the one with the door leading, with a number on, 1116 H Street.

Question. Is that the corner entrance?

Answer. That was the corner entrance, yes. And he was to have the other half. We agreed to put some kind of a partition up in there. As it was, it was merely a canvas partition, that only went 7 feet up, and about 10 feet long, to shield his table, cutting-table, which would not look very good in the store.

Question. Did he occupy that immediately near the entrance of 741 Twelth Street?

Answer. He did.

Question. What arrangement, if any, did you have about the general use of the storeroom?

Answer. Why, he was to have permission to interview his customers in the front, where we furnished our store chairs and settees, and so forth, for the people's convenience, and he was to be allowed to hang shades around the front there, sample shades, and then he was to have a part of the window on the Twelfth Street side for display.

Question. What was the arrangement with reference to the signs to be placed on the windows—on the building?

Answer. Why, we agreed that he should put a band around the window of whatever he wanted to put on there.

Question. What signs were placed on that by Mr. Sammons?

Answer. There was five large panels on the entire store, and he was to have—and he did put "Window Shades" on three of those panels, and "The Shade Shop" on two others, and on the ends of each show window, he put merely "Shades."

Question. What if any arrangement did you have about the shade business that you had already acquired and built up at that time?

Answer. Well, there was not anything much said about that. We understood we were to keep on turning our customers over to him, and he was to bill us the same way as before, and that any stranger coming into the store, we were to call him, or wait on him, and turn the customer or the work over to him. We did not intend to take any profits of any stranger coming in. We merely turned them over to him, but if we got any work out, on our work, our jobs, whether they were new customers or old customers, we usually had him make them up, the same way as he had done before, bill us at a little lower price so we could charge the same price that he was charging to his customers.

Question. Mr. Klesner, I show you Respondent's Exhibit No. 1, and ask you to state what the signs appearing over the center of the

door, "Hooper & Klesner," and those on the right, and over the plate-glass windows, "Wall Papers," and those to the left of the picture, appearing over the show windows, "Painters," were maintained on the building during the entire time that you occupied it?

Answer. It was.

Question. Mr. Klesner, state what changes, if any, have been made in the plate-glass border signs, we will term them, as they appear there, "Shade Shop," "Window Shades," in the respective panels. What changes appear on that picture over what existed at the time Mr. Sammons occupied the store with you?

281 Answer. They are not the same signs at all.

Question. As to the wording, then?

Answer. Yes, the wording on some of the panels is the same, "Window Shades," and two panels, he had, "The Shade Shop." I do not know whether they are the same two panels or not that have "Shade Shop." The difference is that "The" has gone or is not there.

Question. The only difference in that particular part of the signs on that building is that when Mr. Sammons was there the signs that now are "Shade Shop," were "The Shade Shop"?

Answer. Yes, sir.

Question. Mr. Klesner, did Mr. Sammons maintain his name anywhere on the building, or storeroom, as an individual or as the proprietor, in any manner?

Answer. He did not.

Question. State whether or not there was anything by way of signs or advertising matter on the exterior of this building at Twelfth and H Streets which would indicate to the public that two separate and distinct businesses were being conducted therein by separate and distinct persons or firms?

Mr. HAWKINS. I object to that as being a conclusion. You ought to testify what the signs were.

Mr. AHALT. Read the question.

(Thereupon the reporter read the pending question.)

The WITNESS. None, whatever.

Question (by Mr. AHALT). Did you enter into the lease, or any lease with Mr. Sammons pursuant to the understanding to which you have testified?

Answer. We did.

Question. I show you Respondent's Exhibit No. 6, and ask you to state whether or not that is the lease that was entered into with Mr. Sammons, and the firm of Hooper & Klesner?

Answer. That is the lease.

Question. State whether or not Mr. Sammons performed that lease?

Answer. He did, until December 1, 1915, when he suddenly, and without any notice whatever, moved to a new store recently built, a few doors below our store.

Question. Now, Mr. Klesner, you heard Mr. Sammons testify that he gave you notice that he was going to leave. Will you state whether or not notice was given you?

Answer. I got notice from Sammons two days before he moved.

Question. What sort of a notice?

Answer. And that was on an inquiry from me. I noticed a new panel-bodied Ford truck, I think it was, drive up in the front of the door with his signs on, and a new address on, and when I asked if rumors that I had heard a few days previous were true, he admitted they were, and said he was going to leave the first of the month.

Question. Now, Mr. Klesner, did you abandon the business of window shades while Mr. Sammons was located with you at Twelfth Street?

Answer. We did not.

282 Question. Did you hold yourselves out to the public as being in the business of window shades?

Answer. We did.

Question. Where did Mr. Sammons move to when he left your place at Twelfth and H Streets?

Answer. 733 Twelfth Street NW.

Question. What business was conducted on those premises?

Answer. Practically the same as we were conducting in our store, paper hanging and painting and window shades.

Question. Was all this business conducted in the same storeroom?

Answer. Yes, sir; it was. There was only one store over there.

Question. What signs, if any, did you observe on that building during the time Mr. Sammons occupied it, and the business of papering and painting and window shades was being conducted?

Answer. I observed on the face of the building, the sign between the second floor and the roof—there was only two stores there—iron and steel letter sign, fastened to the brick wall, and it was either, "The Shade Shop," or "W. Stokes Sammons," on the top sign.

Question. Well, just a minute. I show you Commission's Exhibit No. 30 and ask you to state whether the signs that you see on that photograph on that building at 733 Twelfth Street are the signs to which you now refer?

Answer. Those are the signs to which I was just talking about.

Question. Were there any other signs on that building at any time that Mr. Sammons occupied it and the business of wall papering and painting was conducted there?

Answer. There was.

Question. What were they?

Answer. He had a border sign on the plate-glass window.

Question. You mean by "border sign," the sign across the top?

Answer. Across the top; about 9 or 10 inches, or 12 inches, whatever size it was, with the name "The Shade Shop" across, and on

each side panel of the bay window, plate glass, just "Window Shades," or "Shades." I think it was only "Shades."

Question. Were there any other signs on that plate-glass window?

Answer. Down in the middle of the main panel he had a large gold sign, oval-shape, "The Decorative Shop."

Question. Were there any other signs on that window besides what you have mentioned?

Answer. I do not remember.

Question. Do you recall whether Mr. Sammons had his name on it?

Answer. I do not remember.

Question. Can you state whether or not the name of "J. C. Mann, Manager," was on that window?

Answer. I can not state positively, but I think not. I am sure I would have seen it if it had been.

Question. What was your best information and belief as to who was conducting that business at 733 Twelfth Street?

Mr. HAWKINS. I will object to his testifying as to his belief. If he has information that is perfectly proper.

Examiner DUNHAM. You may answer the question.

283 The WITNESS, My belief is that Mr. Sammons himself personally conducted the wall-paper trade for some time right after he started.

Mr. HAWKINS. I move to strike the answer out.

Question (by Mr. AHALT). What was the basis of that belief, Mr. Klesner?

Answer. There was no one else in that store that could have attended to it; to my belief there was no one else that could finance it, because I know the people that were in the store.

Question. What, if anything, do you know about the financing of Mr. Mann?

Answer. I know he had none.

Question. What was his occupation prior to the time he came with Mr. Sammons?

Answer. That I do not know.

Question. Do you know where he was employed prior to the time he came to 733 Twelfth Street?

Answer. Yes, I know he was employed by the Cornell Wall Paper Co.

Question. What was his trade?

Answer. That, I do not know. I do not know what he was doing there.

Question. Mr. Klesner, when you were approached by Mr. Sammons about leasing this building, jointly, did you consider that your joint association in the manner that you have described would be to your joint benefit?

Answer. I did.

Question. I believe you have already testified that when Mr. Sammons left Twelfth and H Streets the only changes you made in the signs, so far as the wording of the signs was concerned, was that you dropped the word "The," and put "Shade Shop" on some of the panels. Now, Mr. Klesner, is it customary for you to be at your business place on Sunday mornings?

Answer. I go occasionally, yes.

Question. On the occasion when Mr. Sammons moved, did you go there that morning with any idea as to what was going to be done?

Answer. No. I did not know he was going to move on Sunday.

Question. Tell us just what happened and what was said, to the best of your recollection, when the attempt was made to remove or erase the signs on the plateglass, to which Mr. Sammons has testified.

Answer. I thought they had all moved everything that was there except the big pile of dirt on the floor. His last remark was to me that he would have it moved Monday; send a man up there to move it Monday. I proceeded to close the store. I was ready to go home myself, for that matter, and then Horigan, who has testified here, came in with a stepladder and attempted to commence to scrape the signs off the windows, and I told him to stop it, and he wanted to know why, and I told him I did not want the windows messed up on Sunday. So he went on in, and Sammons came back himself and commenced to argue with me, and I told him the same thing, that I did not want the windows messed up on Sunday. He said: "I want my signs taken down." I says, "I will have them
removed for you to-morrow by the window cleaner. I am not
284 going to have these windows messed up to-day. I know just
what they are going to look like. I am not going to have it."
So he went out again and then they came back four men strong. One of them was about twice my size. That is the time the gun play there has been so much talk about was pulled.

Question. Tell us about that now; what you did.

Answer. I had my gun lying down there, an old gun that I had laying around to protect myself, and on pay-roll days, in case of a robbery, like I presume every business house has——

Question. What kind of a gun was it, a pistol, shotgun, or rifle?

Answer. No, it was a revolver, with six chambers, I believe.

Question. What did you do?

Answer. Took it out of the drawer and told them to get out of there, and they got out, all four of them.

Question. Then what did you do?

Answer. Then I had no way to lock the door, because I had no keys for that side door and I still wanted to go home, and I proceeded to barricade the door and nail it; I think I put three or four 10-penny nails in it, and in addition to that I found a heavy stick on the floor, which I nailed to the floor with a cleat, and nailed it right onto the handle of the door. That was the only way I knew how to lock it.

As I was about through with that, they came back, four men strong, again, with a bicycle policeman of the first precinct. I had the door locked at that time, and he asked me to open the door; he wanted to talk to me, and I, like a fool, opened the door, and then he says, "These fellows say you threatened them with a pistol." I said "I was. They attempted to mutilate my windows to-day and I won't let them. They were too many for me, and I just pulled a bluff on them, and they got out." So he says, "Well, let me see that gun," and I went over and took it out of the drawer where I had placed it again and gave it to him, and he examined it and stuck it in his pocket and said, "Let us go down to the captain," and I, like a fool, again, went along.

Question. Then, was this gun loaded, Mr. Klesner?

Answer. No.

Question. Was it in working condition?

Answer. No, it was not. The barrel would not turn around. It was rusty.

Question. Had Mr. Sammons ever seen that gun before?

Answer. I do not know as he has or not. I had it there right along. I do not think I had any occasion to pull it on him before.

Question. You went down to the station house?

Answer. Yes.

Question. And before you came back, later?

Answer. Yes. Do you want me to tell what happened at the station house?

Question. Yes.

Answer. When I got down to the station house, the captain was there and he heard the complaint, and he told me, "Mr. Klesner, that is a pretty serious charge, and I will have to hold you under $100 bond. If you have any friends you better call them up if you don't want to spend the day down here." And I got my partner on the phone, and got a lawyer, and while that was going on, they proceeded back out again. Of course, I know where
285 they went to. I stayed at the captain's room for nearly an hour before my lawyer came, and before my partner came, and he had to go out again to hunt up some cash, and there was about two hours before I got back to the store again. I was told though, by the captain, in going out he says, "Now, Mr. Klesner, don't go back to the store. If I was you I would not go back there. They may be in the neighborhood and you are upset now and you better go home." So, I did, although I did pass by the store. I was in a machine, I think. I passed by the store and saw a terrible looking sight. The entire plate-glass space on the plate glass itself, was so smeared over with old paint and matter that had been used to take it off with that it was a sight, the very thing I was afraid they were going to do, but, true to my promise to the captain, I went home and let it stay there all that Sunday.

The next day we got hold of the window cleaner and had the windows cleaned and then we got hold of a carpenter and had the hardwood floor in the show window on the H Street side recleaned and refinished. That was completely ruined; where the ammonia or whatever they had used had fallen and dropped on the floor it had turned the wood completely black.

Question. What kind of a floor was it?

Answer. Oak.

Question. Was it a parquet floor?

Answer. No, not a parquet; just plain oak strips one way.

Question. What that floor elevated from the other floor?

Answer. Yes; that was one we had built ourselves after we got in the store.

Question. What was the outcome of this arrest, Mr. Klesner?

Answer. Why, I went down to the police court next day, and stated my case before the magistrate and told him the circumstances, just as I am telling it here, and he ordered the money returned to me, my bond, and discharged me, and that was the last of that case.

Question. Now, when you returned to your store, what condition did you find?

Answer. Why, I returned there Monday morning and found the same pile of dirt in the middle of the floor, and, of course, the men that was there and the door on the Twelfth Street side was locked, but all of the barricades were gone; the nails had been pulled out; at least, the barricades were laying on the floor, laying around, and one was broken, and the nails were pulled out, and the door was locked, so we proceeded to clean up. I want to mention in connection with this, though that we owed Mr. Sammons a bill of thirty some dollars, I think it was, that we owed him for work that he had done previous to his leaving us, and, knowing that he had damaged our show-window floor, he offered that bill in settlement, which was accepted.

Question. Did you call that to his attention?

Answer. I did not. Mr. Hopper did.

Question. Have you had any conversation or talked with Mr. Sammons since that time?

Answer. I have not spoken one word to Mr. Sammons from that day to this.

286 Question. Did you replace those signs with other signs?

Answer. Yes, we did.

Question. And they are the signs that appear in respondent's Exhibit No. 1, on the plate-glass windows?

Answer. They are; they are there yet.

Question. In what colors are these signs made up, Mr. Klesner?

Answer. Dark green; the same color as our signs above the store were, with a gold band around the letters.

Question. White letters?

Answer. Oh, yes, white letters.

Question. Is that a very common sign, so far as the colors are concerned?

Answer. Why, yes, as far as the white is concerned. I do not see how you can possibly use any other color if you want the lights at night to show your letters. Any dark color would not show any letter.

Question. That character of sign is very common?

Answer. That kind of a sign is very common. It is bound to be.

Question. Now, Mr. Klesner, can you state whether or not when you left to go to the station house with the officer any clothing belonging to Mr. Sammons or Mr. Horigan, was left in the Twelfth Street store?

Answer. They was not. Previous to going with the officer, I remember making a remark, "Wait a minute, they are hollering for their clothes." At that time he was talking to me and I told them to stay out, and one of them said, "I want my clothes," and I said, "Where are they?" He said, "Over in the closet." I suppose that was his excuse for wanting to go in with the policeman. I still insisted on him staying out.

Mr. HAWKINS. I move to strike out what he supposed.

Mr. AHALT. Don't say what you supposed.

The WITNESS. Read the answer.

(Thereupon, the reporter read the preceding answer of the witness.)

Question (by Mr. AHALT). Did he get his clothes while the policeman was there?

Answer. I went over and got them myself, the whole bunch of them, and gave them to him, four of them. Then I locked the door and went with the policeman.

Question. You heard Mr. Sammons testify that you went around behind the screen, or something, between the time, or while they were going after the policeman.

Answer. Behind the screen I had. I am sure I was at least five minutes barricading that door, and that was about all the time that was consumed from the time they were put out until the officer came.

Question. You were not hiding behind the screen?

Answer. No; I was not hiding any place.

Question. To your knowledge, did Mr. Sammons have any experience, or was he trained in the wall-papering or painting business?

Answer. To my knowledge, he was not.

287 Question. Now, when Mr. Sammons left Twelfth and H Streets, what did you do, so far as the business of window shades was concerned?

Answer. Why, he had put us in a peculiar position. You remember, he approached us. Previous to him approaching us on Eleventh Street, we were dealing with S. Kann Sons Co., getting our shades there. When he broke his lease with us and moved out we could not very well keep on dealing with him after that, and in the

meantime, Kann Sons had given up their shade shop and we knew of no other place to get shades the way we had previously gotten them made and we got together and talked it over and decided to carry on the window-shade business the same as Sammons had done, using the rear part of the store to operate in and in that way help to contribute to the rent that he had refused to pay.

Question. Did you consider that the rent, the whole of the $83.33, at that time a burden, or more than you felt you could pay?

Answer. Yes, indeed. It was far more than we could afford to pay out of your little bit of shade work we were then doing. We felt, inasmuch as since the public had come there and begin to come there and as we had tried to get shade work more than we had tried to get before, and he, being there, naturally would cause other people to know there were shades to be had in that store, we thought we may as well continue and put an extra in there, and try to make it pay that way; as it appeared later on we did make that end of it pay.

Question. Had your business of window shades increased materially during the time that you and Mr. Sammons occupied Twelfth and H Streets, jointly?

Answer. Yes, it had, right smart.

Question. And such increased as had been realized was not due to the fact that you had gained in trade at the store, but had built it up outside?

Answer. Most of our trade we got by doing work around town in different houses, and we did solicit shades more than we had ever done before while Mr. Sammons was with us, because we got a little percentage on it. I am sure that we increased our own personal window-shade work more than 100 per cent over what we were doing before Mr. Sammons went with us at that corner.

Question. Mr. Klesner, since Mr. Sammons left your place, under what trade name have you conducted the business?

Answer. Hooper & Klesner.

Question. I show you Respondent's Exhibit No. 2 and ask you whether that is the character of billhead that you have used at Twelfth and H Streets since Mr. Sammons left?

Answer. It is.

Question. Have there been any material changes in that billhead during the time you occupied Twelfth and H Streets?

Answer. There has not.

Question. Have you added or had on any of your stationery or billheads the words "Shade Shop" or "The Shade Shop"?

Answer. We have not added a thing.

Question. Have you ever, at any time, on any of your stationery, and even up to the present time, had the words "Shade Shop" or "The Shape Shop" on any of your stationery or letterheads?

288 Answer. We have not.

Question. Then, when Miss Williamson testified yesterday that she thought that you had maintained the words "Shade Shop" on some of your stationery she was mistaken?

Mr. HAWKINS. I want to object to that for the reason that my recollection of Miss Williamson's testimony was that she did not think so, but that she said positively.

Question (by Mr. AHALT). Well, I will put it this way: When Miss Williamson testified yesterday that you had maintained the words "Shade Shop" on some of your stationery, she was mistaken?

Answer. She was.

Question. I show you Respondent's Exhibit No. 11, and ask you whether that is the style of letterhead that you are now using in your business at 929 H Street?

Answer. It is.

Question. Do your billheads for the business at 929 H Street contain the same words as does this Exhibit No. 11?

Answer. Read that again, please.

Mr. AHALT. Read the question.

(Thereupon, the reporter read the pending question.)

The WITNESS. They do.

Question (by Mr. AHALT). Mr. Klesner, will you state whether or not any persons have complained to you or to your firm, within your knowledge, about any confusion in the name "Shade Shop" with that of "The Shade Shop," thinking and believing that they were going to The Shade Shop when they had come to your place?

Answer. I have had no occasion, whatever.

Question. Have you ever answered any inquiries, either by telephone or by persons calling at the store, when they inquired for Mr. Sammons, or The Shade Shop?

Answer. I have.

Question. What have been your responses?

Answer. Right after Mr. Sammons left, there would be a number of calls coming in, of course, asking for Mr. Sammons. I told them all that he was not here any more and if they wanted him they would have to look for him elsewhere.

Question. That applied to both telephone inquiries and those calling in person?

Answer. Both; yes, sir.

Question. Did you give your employes any instructions as to what should be done when such inquiries were made?

Answer. I did.

Question. What were they?

Answer. Some few weeks after Mr. Sammons had moved my bookkeeper, Miss Williamson, told me that she had been approached by Mr. Sammons on the street and he had complained that we had taken one of his customers away, and immediately after that I had a conversation with Mr. Hooper and we then decided, and issued an order to the employees, which also included ourselves, that if anyone ever came in and asked for Mr. Sammons, or if anyone ever came and asked for The Shade Shop, to tell them to look elsewhere; that he was not here any more.

289 Question. Have you had any occasion while you were in the store to hear responses by any of your employees to persons making any such inquiries?

Answer. I have.

Question. What have they been?

Answer. To the effect that Mr. Sammons was not at our place of business and this was not his office and this was not his store.

Question. Does that answer apply to inquiries for The Shade Shop?

Answer. Yes, sir; The Shade Shop, or Mr. Sammons.

Question. Mr. Klesner, have you received in the course of your business any mail addressed to The Shade Shop since the date Mr. Sammons left your place?

Answer. I believe we received some mail—some mail was attempted to be delivered in our store immediately on Sammons's removal from our place, but after the postman had been notified, of course, we never saw any mail of any kind of Sammons's, or The Shade Shop, or his name, and we have not until, I think it was in January, some time this year, received a single envelope with the name, "The Shade Shop," or "Shade Shop," on it, excepting in this instance I want to tell you about, and that was around the early part of January, I happened to be in the store myself when the mailman came in, and when he left an envelope there with a return address on, "A. O. Bliss Properties," addressed to "Shade Shop, 741 12th Street, Northwest."

Question. What did you do, then?

Answer. I looked at it for a second. I thought it was strange because I knew A. O. Bliss was one of Sammons's steady customers and he usually has his manager or superintendent attend to all the repair work, and he should have known better than to send a letter——

Question. What did you do with it? That is what I wanted to know.

Answer. I returned it to the postman immediately. That was right after this case had been filed against us. I said, "If ever any mail comes to me addressed to 'Shade Shop,' even if it is my address, don't deliver it. I don't want it."

Question. Is that the only occasion that any mail has ever been delivered or attempted to be delivered to your place since the time immediately subsequent to the time Mr. Sammons left your place?

Answer. That is all. That is the only occasion.

Question. How is your mail addressed, Mr. Klesner?

Answer. Hooper & Klesner, while at Twelfth Street; it was sometimes the corner of Twelfth and H Street, and sometimes 741 Twelfth Street, and sometimes 1116 H Street, but the address was Hooper & Klesner.

Question. Did the Post Office Department ever inform you that they were going to deliver all mail addressed to "Shade Shop," or "The Shade Shop," Twelfth and H Street, to Mr. Sammons?

Answer. They did not.

(Discussion off the record.)

Examiner DUNHAM. We will take a recess until 10.30 a. m., to-morrow.

(Thereupon, at 4.30 o'clock p. m., an adjournment was taken until 10.30 o'clock a. m., April 22, 1921.)

290 April 22, 1921

Before the Federal Trade Commission

[Title omitted.]

ROOM 2702, FEDERAL TRADE COMMISSION BUILDING,
Washington, D. C., Friday, April 22, 1921.

Met pursuant to adjournment at 10.30 o'clock a. m.

Before: Examiner J. J. Dunham.

Appearances: As heretofore noted.

Examiner DUNHAM. You may proceed, gentlemen.

Mr. AHALT. I want to excuse Mr. Klesner and put this witness on the stand, please.

ALBERT J. FARLEY (colored) was thereupon called as a witness on behalf of the respondent, and after having been fully sworn, testified as follows:

Direct examination by Mr. AHALT:

Question. Albert, what is your occupation?

Answer. I am employed in the clerk's office of the Supreme Court of the District of Columbia, as custodian of the files of the Supreme Court.

Question. Will you state whether or not you have had any occasion to examine the papers in cause known as Equity No. 33946?

Answer. I have.

Question. Have you the file jacket with you?

Answer. Yes, I have [producing file].

Question. Is that the only file in connection with the papers filed in that cause?

Answer. It is.

Question. Will you just state to the commission what condition you found the papers in that file so far as they might relate to a bill of complaint and rule to show cause?

Answer. Well, about two months ago Mr. Ahalt came into the office and said that he wanted to see this file. I got it down for him, and he set at the table and looked over the files and found the bill of complaint and another paper—I forget just now what the other was—and he said that he wanted to have copies made of those two papers. Well, I told him that I could call Miss Wilson's attention to it, she being head of the department down there, and he said that he did not want them just then but he would come in another time.

I told him all right and I took this jacket with the papers in it and put it back in the box in the files where it belonged.

Then, Mr. Ahalt came in again to leave an order for the copies of the bill and the other paper—I do not know whether it was an answer or what it was. Anyhow, he came to leave that order for the copies and I got the files down for him, and he looked in
291 the jacket and said that those two papers were not there.

"Well," I said, "Mr. Ahalt, I certainly put that jacket up just as you gave it to me and I do not know what has become of them—they have disappeared." So, anyhow, I made a thorough and complete search for those papers. I have a system that I use to find lost papers and I exercised that to the fullest extent and I have been unable to find them. I do not know what has become of them. The system I use is that in all papers I take the first two numbers. They are, say, 33, and I take the last two numbers, 46, and I search in 34946, 35946, 36946, and so on down, and I have been unable to find those papers. I have made inquiries. The title examiners come in there. They have access to the files and frequently they get papers out; just take out the paper they want and leave the jacket in the box and I have made thorough inquiries of all the examiners that come in there, and they have told me that they did not have them and have not had them; had no use for them.

Question. Are those two papers the bill of complaint and rule to show cause now in that file?

Answer. They are not there; no, sir.

Question. You do not know of their whereabouts?

Answer. I do not know. So far, I have been unable to locate them.

Mr. AHALT. Cross-examine.

Cross-examination by Mr. HAWKINS:

Question. What is your official title?

Answer. Custodian of the files.

Question. Under whom do you work?

Answer. Mr. Morgan H. Beach, the clerk.

Question. That is the clerk of what?

Answer. Clerk of the Supreme Court of the District of Columbia.

Question. You are appointed under him as custodian of the files?

Answer. Yes, sir.

Question. How many men do you have working under you?

Answer. There is only one besides myself.

Question. Are there any women working under you?

Answer. No; no women. A woman is at the head of that department.

Question. What?

Answer. A woman is at the head of the department.

Question. What department?

Answer. Miss Elizabeth Wilson; the files department.

Question. I thought you said you were the head of the department?

Answer. I have charge of the files. She leaves it all to me, as a woman can not handle it very well.

Question. Who is the head of the department?

Answer. Miss Elizabeth Wilson.

Question. She is the head of the file department or division?

Answer. Yes.

Question. What do you call it; file department or file division?

Answer. File department.

Question. Miss Elizabeth Wilson is the head of it?

292 Answer. Miss Elizabeth Wilson.

Question. You are subordinate to her?

Answer. Yes, sir.

Question. There is another man there, too?

Answer. Yes.

Question. He is under you?

Answer. Yes; under me.

Question. What is his name?

Answer. Joseph Bruce. He is the elevator man, also.

Question. Will you let me see that jacket you have there?

Answer. Yes, sir [handing jacket to Mr. Hawkins].

Question. Under your practice here, how many copies of the pleadings have to be filed in court?

Mr. AHALT. I object. This witness has not qualified as knowing anything about the procedure or practice.

Mr. HAWKINS. If he is in charge of the files, he should know.

Examiner DUNHAM. Mr. Witness, you can answer; the objection is in.

Mr. HAWKINS. If you don't know how many, say so.

The WITNESS. Well, I don't know how many they file in cases of this kind, but I do know in divorce cases they file what we call the original bill—that is, the file with the mark of the court on it and then a copy for the defendants, but in these cases I do not recall of ever seeing but one bill, the original bill.

Question. (By Mr. HAWKINS). Is it the usual practice in cases, either in law or in equity, as you have found from your experience acquired while in charge of the files, for the attorneys to file more than one copy of the pleadings?

Answer. Well, it has been in some cases. I do not think they file more than the original bill in the majority of cases—only in such cases as I named.

Question. How long have you been there in charge of the files?

Answer. Since 1904.

Question. And if it was the practice, you would know it, would you not?

Answer. Oh, yes, sir.

Question. So, then, the divorce proceedings are the only ones that you know of where it is the practice of the attorneys to file more than one copy of the pleadings?

Answer. Yes; they file one copy of the original bill and a copy for the defendants.

Question. Those are filed in the clerk's office?

Answer. Yes.

Question. When do they come to your department?

Answer. After they have been entered on the docket.

Question. What do you do with them, then?

Answer. I take this—file the bill and then this jacket is up there already in the clerk's office. The docket clerk puts the bill in this jacket and then after they remain in the clerk's office—now, under this rule, they are sent downstairs to me to be filed.

Question. Then you file them?

Answer. I file them; yes, sir.

Question. How is it possible to get it away from you?

293 Answer. There is no way for the papers to be removed from the files except by an order of court, and that rule is rigidly followed, except a man is an examiner. The examiners have the right to take papers out when the cases have been referred to——

Question. What kind of an examiner?

Answer. Examiner in chancery, to take testimony in cases.

Question. You do not mean these title examiners that you spoke of?

Answer. No, sir.

Question. The title examiners have not got a right to come in and take them without a receipt?

Answer. Not to remove them from the files, no, sir; from the file room.

Question. About when was it that Mr. Ahalt had this jacket; had the two missing papers?

Answer. I should say it was around the middle of February; I think it was about two months ago.

Question. Then, how long after that was it when he came back and they were gone?

Answer. I could not say exactly, but I imagine it was somewhere around about a week. I think it was about a week.

Question. About a week between times?

Answer. Yes. It may have been longer.

Question. During that week, had anybody called and asked for this jacket?

Answer. Not to my recollection.

Question. Supposing that Mr. Ahalt or any other person had obtained an order from the court, what would have happened?

Answer. That order would have been docketed by the docket clerk upstairs in regular course of procedure and then the order would have been sent down to me. I would have put it in this jacket.

Question. Would you have then given them the papers when they presented the order?

Answer. Yes, sir; take their receipt. They would sign this order, also.

Question. And take their receipt?

Answer. And take their receipt; yes, sir.

Question. Does it ever happen that papers are mislaid in your office, without any order or any record of it, as in this case?

Answer. Mislaid. Now, let me understand you. How——

Question. Is it a frequent occurrence for papers to be missing from the jacket without any receipt or order or anything else to show where they are?

Answer. It is not frequent, but it does occur, because I have to handle, as you know, in a great court like this, thousands and thousands of papers. I am very careful, if I say so myself, because I know the importance of it.

Question. And it is quite possible, is it not—haven't you found that it has occurred sometimes that pleadings from one jacket would get into another jacket?

Answer. Oh, yes; yes, sir. That happens.

Question. You would not say, then, that these missing pleadings in this case to which you have testified, have been destroyed, would you?

Answer. No, sir.

294 Question. You would not say they were outside of your office?

Answer. No, sir; I would not say that.

Question. But you just don't know where they are?

Answer. I just don't know where they are. As I say, I have made a thorough and diligent search in every way.

Question. You told Mr. Ahalt that in a situation of this kind you had a system of looking for lost papers.

Answer. Yes, sir.

Question. What is that system?

Answer. As I stated, I take the first two numbers and the last two numbers there, and I will look in jacket No. 34,946; 35,946; 36,946—I keep up that way, thinking that the numbers may have been transposed, or confused in my mind, and not put in the right jacket—put them in the wrong jacket and I have made that sort of search for those two papers.

Question. Now, you have never seen me before to-day, have you?

Answer. Not that I remember.

Question. My name is Hawkins, and you never have seen me over in your office, have you?

Answer. Not that I remember.

Question. So far as your knowledge goes, I have never been there looking for these papers?

Answer. No, sir; not to my knowledge.

(Discussion off the record.)

Mr. Hawkins. I think that will be all.

Redirect examination by Mr. Ahalt:

Question. Albert, you don't wish the commission to understand that you are familiar with all the rules and practices in the court?

Answer. Oh, no. I am not familiar with all of it; no, sir. I have my hands full attending to the files, I tell you, gentlemen, to keep them straight.

Mr. AHALT. That is all.

Recross-examination by Mr. HAWKINS:

Question. You do want the commission to understand that you are familiar with the practices in your department of handling these papers, don't you?

Answer. Oh, yes.

Mr. HAWKINS. That is all.

Question (by Examiner DUNHAM). You say that the rule is that nobody has a right to take those papers out of the office except by an order of the court?

Answer. Yes, sir.

Question. And when such an order is issued for someone to handle those papers that order is put in a jacket in the place where the papers are taken out?

Answer. Exactly.

Question. Was there any such order as that in the case of these papers?

Answer. None; no, sir. No such order, and the docket does not show. When there is such an order issued the docket clerk enters it on the docket. There is no such order on the docket. I would not have it unless it was entered on the docket.

295 Question (by Mr. HAWKINS). Miss Wilson is the head of the department and you have a man under you?

Answer. Yes, sir.

Question. How many other people are there, clerks?

Answer. There are seven others, copyists.

Question. Men or women?

Answer. All women; all under Miss Wilson.

Question. Did they not have access to these files?

Answer. Yes, sir; they have access to them also, but there is only about two of them that make any attempt to handle the files and that is Miss Wilson herself and Miss Gardner. Now, the reason for that is they go up some 8 or 10 feet high and they have to use force to get them out, and they generally call on me to put them up on the stack or take them down.

Question. There are 10 people working there that do have access to those files?

Answer. Yes.

Question. And it would have been possible for any one of those nine people to have gone to this jacket without your knowing it?

Answer. Yes, sir. I might have been out to lunch, or away from the office at the time.

Question. Any one of these other nine people without your knowledge?

Answer. Yes, sir.

Mr. HAWKINS. That is all.

Redirect examination by Mr. AHALT:

Question. Albert, with the exception of the time you are out to lunch, or on a little special mission through the building, you have the direct supervision of the taking out of these files?

Answer. Yes, sir.

Question. Even when these other nine people are there, you are there, and it is your prime duty to see that they return those?

Answer. Yes, sir.

Question. They only act in your absence?

Answer. Yes, sir; that is the idea.

Mr. AHALT. That is all.

(Witness excused.)

ALFRED KLESNER, heretofore called as a witness on behalf of the respondent, was recalled, and testified further as follows:

Direct examination (continued) by Mr. AHALT:

Question. Mr. Klesner, I will show you respondent's Exhibit No. 9, which is an envelope with a return on it, "E. Arnold Nice Company," and ask you to state whether or not that envelope was received by you in the usual course of business?

Answer. It was.

Question. I show you respondent's Exhibit No. 10, and ask you to state whether or not that was received by you in the usual course of business?

Answer. It was.

Question. Did you do business with these concerns?

Answer. I did.

296 Question. Do you still do business with either or both of them?

Answer. I still do business with Lapsley & Bro. Co., Exhibit No. 10.

Question. What about Exhibit No. 9, E. Arnold Nice Co.?

Answer. I did go over there, personally, to Baltimore, about a year or so ago and bought a couple of pieces of goods in their store, and that is all the business I have done with them in the past four or five years.

Question. Do you trade with manufacturers of window-shade cloth, rollers, and so forth?

Answer. I do.

Question. Under what trade name do you trade with them?

Answer. Hooper & Klesner.

Question. How are their communications addressed to your place of business?

Answer. Hooper & Klesner, and the address.

Question. Have you ever received any communications since Mr. Sammons left Twelfth and H Streets from any of these concerns addressed to "Shade Shop"?

Answer. I have not.

Question. Or "The Shade Shop"?

Answer. I have not, in either case.

Question. I show Commission's Exhibit No. 39, which purports to be a postal-card order from Moore & Hill. Will you state whether or not you have ever done any shade business with the firm of Moore & Hill?

Answer. I have not.

Question. I show you Commission's Exhibit No. 40, a similar post-card order from Stone & Fairfax. Have you ever done any business in shades with that firm?

Answer. I have not.

Question. I show you Commission's Exhibit No. 34, a postal-card order signed by E. O. Waggenhoust. Do you do any business with that firm?

Answer. I do.

Question. To what extent?

Answer. To a great extent.

Question. How long have they been customers or how long have you done business with them?

Answer. Ever since I got acquainted with Mr. Waggenhoust through renting the store at Twelfth and H Streets.

Question. That was about 1914?

Answer. May, 1914.

Question. I show you a similar postal-card order, marked as Commission's Exhibit No. 36, from Shannon & Luchs. Will you state whether or not you do any business with that firm?

Answer. I have done business with them.

Question. Since Mr. Sammons left Twelfth and H Streets?

Answer. I am not sure of that, that I have done any business lately.

297 Question. I show you Commission's Exhibit No. 33, which is a postal-card order from or signed by Weaver Bros. Will you state whether or not you do any shade business with that firm?

Answer. I have done considerable.

Question. During what periods; before or since Mr. Sammons left?

Answer. Since Mr. Sammons left me, in the past couple of years.

Question. Did they place orders with you without requiring estimates?

Answer. Yes.

Question. Have they ever requested you to make estimates?

Answer. They have.

Question. Mr. Klesner, state what other real estate firms, or real estate agents in this city you do business with in the manufacturing or furnishing of window shades—some of them.

Answer. Well, yes, of course, some real estate people I have done work for some time in the past that I have not received any orders from lately, I am not doing work for to-day. For instance, I used to do a lot of shade work for N. L. Sansbury Co. I have not done anything for them in the shade line for three or four years.

Question. You think you have done any business with them since Mr. Sammons left Twelfth and H Streets?

Answer. I am not sure of that, but I did do considerable business with them before he left, and also before I got acquainted with Mr. Dienelt.

Question. Are you acquainted with Mr. Dienelt who used to be an employe of Sansbury Co.?

Answer. I am.

Question. Did you receive any orders from Sansbury Co. while Mr. Dienelt was there in charge of that work for Sansbury Co.?

Answer. I am not sure of that. There were several employes at Sansbury's from time to time. I do not know whether I received any from him in particular.

Question. You heard Mr. Walker testify here on behalf of the commission, one of the early witnesses. Will you state whether or not you ever did any shade work for Mr. Walker?

Answer. I have not.

Question. Have you ever done any other work for him?

Answer. I have.

Question. To what extent?

Answer. Wall papering. Not to a great extent.

Question. I show you Commission's Exhibit 45, and ask you to state during what period, if you can recall, you used the letterhead similar to that, or that letterhead?

Answer. I think I have used that during the entire period since Mr. Sammons left. I have had some letters where I have not had this stamp on, "Manufacturers of Window Shades."

Question. With that exception, that is the form of letterhead that you have used since Mr. Sammons left?

Answer. Yes.

Question. That was prior to the time you moved to Twelfth and H Streets?

Answer. Yes; that was all the time while I was there.

298 Question. I show you Commission's Exhibit No. 46, and ask you to state whether or not that is the form of billhead you used since Mr. Sammons left your place of business, and while you were at Twelfth and H Street?

Answer. It is.

Question. Have you ever had on any of these letterheads or billheads the words "Shade Shop," or "Shade Shop"?

Answer. I have not.

Question. Are you acquainted with the real estate broker, L. S. Fristoe?

Answer. Yes.

Question. Have you ever done any shade business with the office of L. S. Fristoe?

Answer. I am not sure I have done any shade work for him.

Question. Have you done other work?

Answer. Yes; I may have done shade work, but I do not recall.

Question. I show you Commission's Exhibit 50, which is a letter on the letterhead of Stewart Hartshorn Co. Do you do business with that concern?

Answer. I do; special.

Question. Under what name did you trade with them?

Answer. Hooper & Klesner.

Question. Do they bill you in that form?

Answer. They do.

Question. I show you Commission's Exhibit No. 52, and ask you to state whether or not you do any business with that firm, and if so, under what name?

Answer. I have been doing business with them, but I do not at this time, or have not for some time past.

Question. Mr. Klesner, during the time that you have known Mr. Sammons was conducting a business under the name of "The Shade Shop," will you state whether or not you recall his every using in connection with the name, the words "W. Stokes Sammons, Proprietor"?

Answer. My recollection is that he has used it all the time in connection with "The Shade Shop."

Question. Did he ever use the name, "Manager" on his letterheads to your knowledge?

Answer. Yes. Of course, I have seen one of the exhibits here with the title "Manager" on, but that is all I know. I had no direct dealings with him while he was at Derrick's.

Question. With whom did you do business while The Shade Shop was located at 819 Fifteenth Street?

Answer. Luther L. Derrick.

Question. While The Shade Shop was at 819 Fifteenth Street, did you have any occasion to place any written orders with The Shade Shop?

Answer. I do not think so.

Question. Did you ever receive any bills from The Shade Shop?

Answer. I received some bills from Luther L. Derrick.

Question. To whom did you make payment?

Answer. Luther L. Derrick. Our bills run on for a little while until they came to a certain amount, and then Derrick would come around and collect; occasionally, we would mail the check.

299 Question. Did Mr. Derrick ever make any statement to you as to the manner in which the business was being conducted at 819 Fifteenth Street, under the name "The Shade Shop"?

Answer. I do not think I have ever had any conversation with Mr. Derrick about the way the business was conducted. I only presumed, and what Mr. Sammons himself told me.

Question. And what Mr. Sammons told you?

Answer. Himself.

Question. What did Mr. Sammons tell you?

Answer. He told me he was now working for Luther L. Derrick, and any bills that we had against him would be paid by Mr. Derrick.

Question. When did this take place?

Answer. That is when they moved away from Eleventh Street.

Question. Did Mr. Sammons ever discuss with you after he came to Twelfth and H Streets the arrangements he had with Mr. Derrick while at 819 Fifteenth Street?

Answer. I do not remember.

Question. I show you Respondent's Exhibit No. 8, and ask you to state whether or not that correctly represents the signs now on display at the building at 929 H Street, in connection with your business?

Answer. It does.

Question. I will ask you whether the name "The Shade Shop," or "Shade Shop," appears anywhere on this building, at 929 H Street?

Answer. Not at present.

Question. Has it ever been on that building?

Answer. It has not.

Mr. AHALT. Please mark this paper for identification, "Respondent's Exhibit No. 13."

(The paper referred to was thereupon marked for identification, "Respondent's Exhibit No. 13, Witness Klesner.")

Question (by Mr. AHALT). I show you what has been marked for identification Respondent's Exhibit No. 13, and ask you to state what that is.

Answer. That is a postal card received by us, to the attention of our Mr. Marceron, who has charge of our shade department, to go and call at the man's office and give him a figure on several window shades.

Question. By whom is that card signed?

Answer. Harry K. Boss, of Boss & Phelps.

Question. Do you do any business with the firm of Harry Boss?

Answer. We do, extensively.

Question. How long have you done business with Boss & Phelps?

Answer. Several years.

Mr. AHALT. I offer this in evidence as Respondent's Exhibit No. 13.

(The paper so offered and identified as "Respondent's Exhibit No. 13, Witness Klesner," was received in evidence, and the same is forwarded herewith.)

Mr. AHALT. Mark these papers "Respondent's Exhibits, for identification, Nos. 14, 15, 16, 17, 18, 19, 20, and 21."

(The papers referred to were thereupon marked for identification, "Respondent's Exhibits Nos. 14, 15, 16, 17, 18, 19, 20, and 21. Witness Klesner.")

300 Question (by Mr. AHALT). I now show you paper marked for identification "Respondent's Exhibit No. 14," and ask you to state what that is.

Answer. That is a letter received by Hooper & Klesner from Charles W. Breneman & Co., Cincinnati, Ohio.

Question. In what business are they engaged?

Answer. Making window-shade cloth, rollers, and so forth.

Question. What is the date of that letter?

Answer. The date is 12/18/19.

Question. Did you receive that letter in the usual course of business?

Answer. I did.

Question. I show you what has been marked for identification "Respondent's Exhibit No. 15," and ask you to state what that is.

Answer. That is a letter, request to Hooper & Klesner for an estimate on window shades from Edson W. Briggs, Munsey Building.

Question. Do you recall whether you submitted an estimate to Mr. Briggs in response to that letter?

Answer. No; I do not recall.

Question. Have you ever done any business with Mr. Edson W. Briggs in connection with window shades?

Answer. Yes; I think so.

Question. I now show you what has been marked for identification "Respondent's Exhibit No. 16," and ask you to state what that is.

Answer. That is a letter sent to Hooper & Klesner from T. M. James & Co., dealers and importers of shade cloth, rollers, and so forth.

Question. What is the date of that letter?

Answer. November 13, 1919.

Question. Did you receive that letter in the usual course of business?

Answer. We did.

Question. I now show you what has been marked for identification "Respondent's Exhibit No. 17," and ask you to state what that is.

Answer. That is a request to Hooper & Klesner—they misspelled Klesner—from the National Park Seminary, Forest Glen, Md., for prices on 100 yards of shade cloth.

Question. Do you recall whether or not you furnished that price?

Answer. I do.

Question. Did you fill the order?

Answer. I do not know.

Question. Have you ever done any of the shade business of the National Park Seminary?

Answer. I do not remember.

Question. I show you what has been marked for identification "Respondent's Exhibit No. 18," and ask you to state what that is.

Answer. That is an order from the Southern Railway Co. requesting 4 window shades complete, to be installed.

Question. To whom is it addressed?

Answer. To Hooper & Klesner.

Question. Did you fill that order?

Answer. We did.

301 Question. I show you what has been marked for identification respondent's Exhibit 19, and ask you to state what that is.

Answer. That is an order from the Fruit Growers Express Co., Munsey Building, Washington, D. C., sent to Hooper & Klesner, 929 H Street NW., for one shade.

Question. Did you fill that order?

Answer. We did.

Question. I show you what has been marked for identification respondent's Exhibit No. 20, and ask you what that is.

Answer. That is a purchase order from the Treasury Department, sent to Hooper & Klesner for a number of shades.

Question. Did you fill that order?

Answer. We did.

Question. Have you filled previous orders for the Treasury Department for shades?

Answer. I do not remember.

Question. I show you what has been marked for identification "Respondent's Exhibit No. 21," and ask you to state what that is.

Answer. That is a letter sent to Hooper & Klesner from Stewart Hartshorn Co., and received by us, dated October 14, 1919.

Question. Stewart Hartshorn Co. are manufacturers of shade cloth, are they not?

Answer. And rollers; principally rollers.

Mr. AHALT. I now offer in evidence respondent's Exhibits Nos. 14 to 21, inclusive.

(The papers so offered and identified as "Respondent's Exhibits Nos. 14, 15, 16, 17, 18, 19, 20, and 21, Witness Klesner," were received in evidence, and the same are forwarded herewith.)

Question (by Mr. AHALT). I observe that these respondent's Exhibits Nos. 14 to 21, inclusive, cover a period from about July, 1919, to April 11, 1921. Will you state whether or not these exhibits comprise all such orders for shades you have received in the course of your business?

Answer. I did not get the last two words.

Mr. AHALT. Read the question.

(Thereupon the reporter read the pending question.)

Question (by Mr. AHALT). In other words, are those all the orders you received during that period?

Answer. It is not all the orders. It is only a few of the orders we received.

Question. Will you state why you have not produced any such papers or orders for shades during the period prior to July, 1919?

Answer. I could not find any old files there. We have a file for 1919 and one for 1920 and the present year. I dug in all three of them and picked out a few here and there.

Question. Where are the files that you kept prior to 1919?

Answer. I think they are destroyed. When we moved we only kept two years' records, I think.

Question. Mr. Klesner, I will ask you whether you have, since the time Mr. Sammons left Twelfth and H Streets, at any time and in any manner advertised in the newspapers or any other publications under the trade name of "The Shade Shop," or just "Shade Shop"?

302 Answer. We have not.

Question. Mr. Klesner, I show you commission's Exhibit No. 12, which is a part of the telephone directory, showing a listing, "Shade Shop, Hooper & Klesner, Southeast Corner 12th and H Streets, N. W.," under the number "Main 4763," and ask you to state whether or not you have ever given any orders or instructions to the telephone company for change in that listing?

Answer. I have not.

Question. I refer now to a time prior to your removal to 929 H Street.

Answer. I understand.

Question. Is this listing shown on commission's Exhibit 12 the character of listing in the words and figures that you have carried in the telephone directory since Mr. Sammons left your place of business?

Answer. It is.

Question. I show you commission's Exhibit 11, and ask you whether or not you have taken any steps or given any instructions to the telephone company to correct or add to or supplement the words "Shade Shop, 741 12th Street, N. W.," under the phone number of "Main 4763"?

Answer. We have not.

Question. Let us see if you understand the question.

Answer. I understand.

Question. I do not know whether you do or not.

Mr. HAWKINS. Well, let us find out.

Mr. AHALT. I ask you to read the question, Mr. Reporter.

(Thereupon the reporter read the pending question, as follows:)

"I show you commission's Exhibit 11 and ask you to state whether or not you have taken any steps or given any instructions to the telephone company to correct or add to or supplement the words "Shade Shop, 741 12th Street, N. W.," under the phone number of "Main 4763"?

Mr. HAWKINS. Now, what did he answer?

Question (by Mr. AHALT). Wait a minute. Let me add something more to that question.

Answer. I did not understand the question.

Mr. HAWKINS. What did he answer?

(Thereupon the reporter read the answer to the pending question, which was: "We have not.")

Question (by Mr. AHALT). What is your answer?

Answer. My answer is, We have.

Question. What changes have you ordered or given instructions for?

Answer. We have instructed them to take it out entirely as a listing.

Question. Did you give the telephone company any instructions to publish, as is shown in commission's Exhibit No. 11, the words "Shade Shop, 741 12th Street, N. W.," under the number "Main 4763"?

Answer. Read that question, please.

(Thereupon, the reporter read the pending question.)

The WITNESS. We did not.

303 Question (by Mr. AHALT). Mr. Klesner, you were present when Mr. Bowie and Mrs. Bowie testified about the transactions they had with your firm at Twelfth and H Streets in connection with the purchase of an order of shades. Will you state whether or not you have any knowledge of that transaction except what you have heard here?

Answer. None.

Question. You were also present, I believe, when Mr. Shelton testified as to a transaction he had with your firm at Twelfth and H Streets. State whether or not you have any knowledge, either directly or indirectly of this transaction, aside from what Mr. Shelton testified to.

Answer. None.

Question. You also heard Mr. Etchinson testify. I will ask you whether you have any knowledge either directly or indirectly in connection with that transaction, aside from what was testified here?

Answer. I have.

Question. What is it?

Answer. It came to my knowledge about the time the bill was to be collected. Mr. Marceron, my shade man, told me all about it. That is to say, he told me that a Mrs. Pollock——

Mr. AHALT. Just a minute.

Mr. HAWKINS. Well, let him finish.

Question (by Mr. AHALT). I think I can save repetition. State whether or not what Mr. Marceron testified to yesterday, in substance, what he informed you.

Answer. It was.

Question. You heard Mr. Eugene Goff testify, I believe, as to a transaction with your firm in connection with shades. State whether

or not you have any information as to that transaction other than what he testified to.

Answer. I do not remember what that was; except what I have heard here. What I have heard here; I have forgotten.

Question. Did you have any knowledge of any such transaction prior to the time Mr. Goff testified?

Answer. No, not to my knowledge.

Question. You heard Mrs. Lines testify as to a transaction she had with your firm, I believe. Will you state whether or not you had any knowledge of such transaction except such as she testified to here?

Answer. None.

Question. Then, as I understand you, none of these parties to whom I have just referred have made any complaint to you concerning such transactions?

Answer. None whatever.

Question. You have heard, I believe, the testimony of D. Alexander Wills, hotel porter at the Dewey Hotel, as to a transaction with your firm in connection with the purchase of shades. Will you state whether or not you have any knowledge, either directly or indirectly as to this transaction, except as to what he testified here?

Answer. None.

304 Question. Now, Mr. Klesner, you were present yesterday when Mr. Appleby testified, I believe, and heard him refer to a letter he received from The Shade Shop. Will you state whether or not that letter was turned over to you?

Answer. It was.

Question. Personally?

Answer. Personally.

Question. Where is that letter?

Answer. It was to be used in evidence of a certain case between Sammons and ourselves about five years ago. After that I do not know what became of it.

Question. Do you know this letter's present whereabouts?

Answer. I do not.

Question. Is your recollection clear as to what this letter contained, Mr. Klesner?

Answer. Yes; pretty much.

Question. State what the contents were, in substance.

Answer. The contents were that Mr. Sammons stated that he had now moved to himself and were prepared to give a much lower price on window shades than Mr. George J. Johnson had heretofore paid us, and went on to state what he would furnish the different size shades for. Mr. Sammons knew the sizes of the shades of the Farragut apartment house, to which he referred in this letter, and he knew what material was used and he knew what prices we were getting.

Question. Did Mr. George J. Johnson, or his agent, have charge of the Farragut Apartments?

Answer. Yes, he had had full charge of the Farragut Apartments.

Question. Had Mr. Sammons hung any shades for you at the Farragut Apartments prior to the time he left?

Answer. He had.

Question. Could you approximate on how many occasions?

Answer. Over one hundred times.

Question. About how long after Mr. Sammons had left Twelfth and H Streets did you receive this letter?

Answer. Two or three days after he left.

Question. Did you examine these prices that Mr. Sammons quoted Mr. Johnson?

Answer. I did. In justification to ourselves I took the letter back to Mr. George J. Johnson, together with invoices of prices from several manufacturers of shade cloth and rollers and proceeded to show him, and did show him, that the price given by Mr. Sammons was below the cost of those materials.

Question. Were they current invoices you showed to Johnson for the purpose of showing the prices?

Answer. They were.

Question. You were at that time making up the shades, were you not?

Answer. No; we had not started. We had gotten prices from the different houses that sell shade cloth, and so forth, and those first invoices, those were the ones, those first price lists were the ones we presented to Mr. Johnson.

Question. Did you satisfy Mr. Johnson that your prices were fair and reasonable?

305 Answer. I did.

Question. Have you continued to do the shade business for Mr. Johnson or his successor?

Answer. I have, up to this day.

Question. Have you any knowledge of any occasion when they have asked for competitive bids for window shades when they desired them?

Answer. I have no personal knowledge except by what Mr. Appleby, the successor to Mr. Johnson, has told me.

Question. Do they usually ask you for estimates or place orders?

Answer. They have on one or two instances asked for estimates.

Question. How frequently, approximately, do they give orders for shades?

Answer. In the fall of the year we receive—oh, sometimes every week.

Question. That has continued since the time Mr. Sammons left you in 1915?

Answer. It has.

Question. Have they ever called upon you for a demonstration that your prices were reasonable since that occasion to which you have referred?

Answer. They have not.

Question. Mr. Klesner, you are familiar with the prices Mr. Sammons charged in his business for widow shades during the time that he was with you at Twelfth and H Streets, and prior to that time?

Answer. No.

Question. You have seen his prices, have you not?

Answer. Well——

Mr. HAWKINS. He said he was not familiar with them.

The WITNESS. I knew approximately what he was charging, but I could not say exactly as to how many dollars and cents he charged for each individual shade.

Question (by Mr. AHALT). I understand that. How does Mr. Sammons' prices that he charges for shades compare with prices charged by other shade dealers in the city of Washington?

Mr. HAWKINS. I object to that, as the witness has previously stated that he did not know about his prices. It is very clear that he is not competent to testify to it.

Examiner DUNHAM. You may answer the question now, Mr. Witness.

The WITNESS. I do not know the prices of any other shades, at that. I only know our own, what we charge, and I know by experience that we have gotten about 50 per cent of our estimates. On others we have lost, so I presume——

Mr. HAWKINS. I object to the witness testifying as to his presumption.

The WITNESS. I will let the commission decide themselves; presume themselves, then. We are getting 50 per cent of our estimates.

Question (by Mr. AHALT). When Mr. Sammons left Twelfth and H Streets, what did you do, if anything, by way of informing the public by circularizing them, or your old customers about engaging in the manufacture of shades? Did you circularize the
306 public; inform them that Mr. Sammons had left you and you had engaged in the manufacture of window shades?

Answer. No.

Question. Did you run any advertisements to that effect in newspapers, or any other publications?

Answer. We did not.

Question. Did you carry any special ads. in the back of the telephone directory, any display ads. about manufacturing window shades?

Answer. Did we?

Question. Yes.

Answer. No.

Question. When Mr. Sammons and your firm entered into this arrangement to occupy Twelfth and H Streets, jointly, was there

any understanding or agreement that you should abandon the window-shade business?

Answer. None whatever. He offered to keep on making shades the same as Mr. Derrick had been doing while he was with us.

Question. While Mr. Sammons had his place of business at Twelfth and H Streets, how many men did he have employed there besides himself?

Answer. Most of the time he had one.

Question. Who was he?

Answer. He was Horigan, as has been testified to here.

Question. What was the highest number of men that he had employed at any time, to your recollection?

Answer. My recollection is that he had one more man and a boy in the busy part of the year.

Question. How long a period would that extra help over Mr. Sammons and Mr. Horigan continue? Would it continue for any length of time, or just for a short season, the busy season?

Answer. About three months or so.

Question. Speaking generally, what would you say would be the number of persons besides Mr. Sammons, who were employed, on an average, in the conducting of his business?

Answer. Well, he maybe averaged two besides himself.

Question. Have you any knowledge of the volume of business done by Mr. Sammons while he was at Twelfth and H Streets?

Answer. No personal knowledge.

Question. This storeroom at Twelfth and H Streets was not partitioned off? That is, the business of Mr. Sammons, or that part of the store occupied by him, was not completely partitioned off from your part of the business, was it?

Answer. It was not.

Question. Was there a desk, or anything, that was used jointly between Mr. Sammons and yourselves?

Answer. No.

Question. Now, Mr. Klesner, think what signs or advertising matter you carry on any of your automobile trucks and have carried since Mr. Sammons left Twelfth and H Streets, in connection with the business of Hooper & Klesner.

Answer. I have two trucks; one an Oldsmobile. At the top is a space of 6 inches wide, and the length of the top, on which I have
"Window Shade Shop," and on each side and midways down
307 on the body, I have a large wooden board sign across the length of the body, from each side, with the name, "Hooper & Klesner, 12th and H Streets, N. W.," and on the body panel itself, I have "Wall Papers, Painters, Interior Decorators," and phone number, and on the back I have, "House Painting." That is all the signs on the Olds. On the Ford—the other is a Ford truck—on that I have a like board sign alongside of the body, the middle, the name, "Hooper & Klesner, 12th and H Streets, N. W.," and on the body

panels, the three small panels on each side, and rear, "Window Shade Shop," each in a separate panel. That is in a separate panel.

Question. What signs do you maintain on your trucks or truck at the present time, Mr. Klesner?

Answer. The same signs. I have not got them changed. I have not got my address changed on them.

Question. During the time that Mr. Sammons was at 733 Twelfth Street did you ever see this gentleman, Mr. J. C. Mann, who has been referred to in the testimony, about that place?

Answer. Yes; a number of times.

Question. How long did he stay there, to your knowledge?

Answer. I do not know how long he stayed there.

Question. Could you approximate at all?

Answer. Three or four years, or so, off and on. I think he was away for a little while.

Question. Now, Mr. Klesner, following the time when Mr. Sammons left your place of business, will you state whether or not your firm had any litigation with Mr. Sammons?

Answer. It did.

Question. What was the nature of it?

Answer. He entered a suit against us in the Supreme Court of the District of Columbia.

Question. When?

Answer. Oh, about December 15, I think it was. I am not sure of the date. I think that is when it was.

Question. Shortly after he moved?

Answer. Yes, sir.

Question. Did you have any knowledge from Mr. Sammons, or from anyone else, that such a suit was to be filed?

Answer. None whatever.

Question. I refer to the time prior to the action being filed.

Answer. None whatever. The first notice was when we received a summons in court.

Question. Had Mr. Sammons ever complained to you or to your firm about the use of the words "Shade Shop" on your windows other than probably at the time when he actually moved his stuff out on that Sunday morning?

Answer. None.

Question. The first knowledge you had, then, of any objection on his part to the use of those words was the filing of this suit?

Answer. That was the first.

Question. Now, Mr. Klesner, it has been testified here that the original bill of complaint filed in Equity Cause No. 33946, in the Supreme Court of the District of Columbia, and the rule to show cause can not at this time be found; that the same have been mislaid, lost, or destroyed.

308 First, will you state whether or not that is the only suit, the one to which you have just testified, that was ever filed in

the Supreme Court of the District of Columbia by Mr. Sammons against your firm?

Answer. That was the only suit.

Question. I wish you would state as briefly as you can just what the nature of this suit was.

Mr. HAWKINS. I will object to that. I will object to this witness testifying as to what the nature of the suit was. The evidence shows conclusively that he is not a lawyer and he does not know anything about it. I object to his testifying anything about the nature of this suit.

Examiner DUNHAM. You may answer.

The WITNESS. I ought to know pretty well what was in that suit.

Examiner DUNHAM. I ought to know pretty well what was in that suit.

Mr. HAWKINS. Is not what you ought to know. I don't want it to go into the record.

The WITNESS. I do.

Mr. HAWKINS. You are the witness here, and you do what Judge Dunham tells you to do.

The WITNESS. He has told me to answer.

Mr. HAWKINS. I am objecting to what he ought to know.

The WITNESS. I do know, then, what was in that suit, because I read it several times, personally, what was in that suit——

Mr. HAWKINS. Just a minute before you proceed. I now request the privilege of examining the witness as to what legal knowledge he has, training and experience, as to whether he could tell what would be the legal effect of any pleadings or any prayers in pleadings before he goes any further.

Mr. AHALT. I submit that counsel has a perfect right to cross-examine this witness at the proper time and not at this time, and I submit further, that this witness has already stated that he was a party to this suit and that he read the bill of complaint and knows what the purpose of this suit was.

Mr. HAWKINS. I submit that his attorney in open court has already gone on the stand and sworn what was in it. If he is going to start to give us his opinion, I have a right now to cross-examine him as to the legal training, experience, or knowledge, if any, he has, before he goes any further.

Mr. AHALT. I will state for counsel's information that the respondent, and witness here, is not a lawyer; does not contend that he is and that he has had no legal training.

Examiner DUNHAM. Now, you can answer, Mr. Witness.

Mr. HAWKINS. Am I going to have the right to examine him?

Examiner DUNHAM. In the face of that admission?

Mr. HAWKINS. Yes, sir.

Examiner DUNHAM. Yes.

Question (by Mr. HAWKINS). Mr. Klesner, have you ever studied law?

Answer. I have not.

Question. Have you ever attempted to practice law?

Answer. I have not.

309 Question. Have you ever asked to be admitted to practice law in any jurisdiction?

Answer. I have not.

Question. Do you know the difference between a suit at law and a suit in equity?

Answer. Sir?

Question. Do you know the difference between a suit at law and a suit in equity?

Answer. I can not say as I do—why, I think that a suit in law is a suit about money——

Question. I don't want what you think. I asked what you knew.

Answer. All right, then; I do not.

Question. All right. You think you do. Prior to the time this case was filed against you by Mr. Sammons, and to which you refer now, and of which you have told us all about, have you had any other cases filed against you?

Answer. Yes.

Question. How many lawsuits have you been involved in?

Mr. AHALT. I object to this course or thread of cross-examination. I understood that the cross-examination was to be directed as to his legal knowledge, knowledge of legal procedure.

Mr. HAWKINS. I want to find out how many law suits he has been in. He is going to tell us about those, too.

Question (by Mr. HAWKINS). How many law suits have you been in before that one?

Mr. AHALT. You mean in the Supreme Court of the District of Columbia or J. P. courts?

Mr. HAWKINS. Any kind.

Mr. AHALT. I submit that this will only tend to pad the record and delay the proceeding.

Examiner DUNHAM. You may answer.

The WITNESS. I think I have had two law suits previous to this.

Question (by Mr. HAWKINS). Where were they?

Answer. Municipal court.

Question. Where?

Answer. District of Columbia.

Question. So, prior to this time that Mr. Sammons filed suit against you, you never had any action, any suits at law or equity, other than two in the municipal court of the District of Columbia?

Answer. That is all.

Mr. HAWKINS. I renew my objection.

Mr. AHALT. Now, Mr. Reporter, repeat the question—I will say that before that is repeated—I will ask one more question of Mr. Klesner.

Question (by Mr. AHALT). Mr. Klesner, you have heard it testified to here, that these papers, the original bill of complaint and

rule to show cause, originally filed in that proceeding, known as Equity 33946, in the Supreme Court of the District of Columbia, could not be found. I wish you would state what efforts, if any, you have made in trying to get the best evidence you could since you have learned of the absence of these papers, as to the contents of that bill?

310 Answer. I have been down to the office of Samuel Gusack, in the District of Columbia, and asked him to turn over to me all the papers he had in that file, which he did.

Question. Did you find in those papers that he turned over to you the original bill or any copies of that bill of complaint?

Answer. I did not.

Question. What explanation, if any, did he give as to the absence of them?

Mr. HAWKINS. I object to that as being the purest hearsay.

Examiner DUNHAM. You may answer.

The WITNESS. He told me he did not know where they were.

Question (by Mr. AHALT). Now, Mr. Klesner, please state as nearly as you can just what charges were made in this bill of complaint and what Mr. Sammons, as plaintiff in that cause, asked in the way of relief of the court.

Mr. HAWKINS. To which I object again.

The WITNESS. He charged in his complaint the we had appropriated his trade name and were holding ourselves out to the public as "The Shade Shop," or "Shade Shop"; that he had suffered great losses since the time he moved and asked the court to issue an injunction that we be ordered to remove the signs we had put on our windows. That is the short of the contents of the bill of complaint.

Question (by Mr. AHALT). Under what name did that bill of complaint charge you as having conducted your business?

Answer. Read that.

(Thereupon the reporter read the pending question.)

The WITNESS. "Shade Shop, Hooper & Klesner."

Question (by Mr. AHALT). Did you, at that time, conduct your business under the name of "Shade Shop, Hooper & Klesner"?

Answer. We did not. I remember in the complaint every time the name of "Shade Shop" was printed it was, what do you call it, quoted?

Question. The words, "The Shade Shop" were in quotation?

Answer. Not "The Shade Shop"; "Shade Shop, Hooper & Klesner."

Question. State whether or not the W. Stokes Sammons, trading as "The Shade Shop," who was named as a plaintiff in that cause, is the same W. Stokes Sammons as is present here in this proceeding?

Answer. He was.

Question. State whether or not the bill of complaint charged that you were misleading and deceiving the public by the use of the words "Shade Shop, Hooper & Klesner" into the——

Answer. I did.

Question (continuing).——belief that it was The Shade Shop?

Answer. It did charge so.

Question. State whether or not any exhibits were filed in that proceeding by the plaintiff, such as photographs or anything of the kind.

Answer. Yes. There was two photographs of our store.

Question. Have you seen the photographs which have been introduced here as Commission's Exhibits Nos. 31 and 32——

Answer. I don't know the numbers of those—I don't want to testify these are the numbers.

311 Question (continuing).——which purport to be a photograph or two photographs of the building at Twelfth and H Streets, one of which was taken of the H Street side, and one of which was taken of the Twelfth Street side?

Answer. The two photographs that I have seen exhibited here, and seen a number of times in this room, are the correct photographs of my store at the corner of Twelfth and H Streets as it appeared after Mr. Sammons left.

Question. Were they the photographs that were filed as exhibits in this proceeding in the Supreme Court of the District of Columbia?

Answer. They were.

Question. Do you recall whether or not the bill of complaint also alleged that Mr. Sammons had been engaged in a business of making window shades under the trade name of "The Shade Shop" for a long period of time prior to the filing of that suit?

Answer. It said something to that effect.

Question. State whether or not it was the contention of Mr. Sammons in that bill of complaint that he was entitled to the exclusive use of the trade name, "The Shade Shop"?

Answer. It did state so.

Question. Was a summons or subpœna served upon you to answer such bill of complaint?

Answer. They were.

Question. What, if anything, did you do after having received the same?

Answer. We engaged counsel.

Question. Who represented you at that time?

Answer. Tepper & Gusack.

Question. Did you file or make any answer to that suit?

Answer. We did.

Question. Have you examined the certified copy which has been introduced here and which is marked Respondent's Exhibit No. 7, purporting to be certified copy of answers filed in that cause, by you and Harry S. Hooper?

Answer. I have.

Question. Does this certified copy appear to be a true copy of the answers which you filed in that proceeding?

Mr. HAWKINS. I am going to object to this question as being extremely leading. He has been leading the witness question after question. I want the record to show I am objecting to counsel putting the words in the witness's mouth. It is perfectly evident to everyone in the court room what is going on.

Mr. AHALT. I will say for the record that it has been my purpose and intention to not lead the witness. Read the question.

(Thereupon the reporter read the pending question.)

The WITNESS. It does.

Question (by Mr. AHALT). Have you and Mr. Sammons been on speaking terms since the filing of this suit in the Supreme Court of the District of Columbia?

Answer. Mr. Sammons and I have not been on any kind of terms since that time.

Question (by Examiner DUNHAM). Could you answer his question? His question was, Have you been on speaking terms.

Answer. I have not spoken to Mr. Sammons since that day.

312 Question (by Mr. AHALT). To your knowledge has Mr. Sammons been in your place of business since he vacated the premises at Twelfth and H Streets, or following this suit?

Answer. Yes.

Question. What, if anything, did you do when you learn that he was visiting or had been in your place?

Answer. I told my employees to inform him that if he ever went in there again—to tell him that I did not want him in there.

Mr. AHALT. You may cross-examine.

Examiner DUNHAM. We will take a recess now until 2 o'clock.

(Thereupon, at 12.30 o'clock p. m., a recess was taken until 2 o'clock p. m.).

AFTER RECESS.

The hearing was resumed, pursuant to the taking of recess, at 2 o'clock p. m.

ALFRED KLESNER, the witness under examination at the taking of recess, resumed the stand and testified further, as follows:

Direct examination (continued).

Mr. AHALT. I just want to ask you a couple of questions.

Question (by Mr. AHALT). Mr. Klesner, on yesterday, while Miss Williamson was on the stand, I believe Mr. Hawkins asked her a few questions about some conversation that you and Miss Williamson had while you were sitting at one end of this table. I wish you would state just what that conversation was and what she said and what you said, as you recall it.

Answer. There was not any conversation. She spoke to me twice, I believe. The first time she was telling me something about what happened in the office, some trivial matter—I do not think there was anything to that. The second time was when Mr. Blundon was sit-

ting here testifying as to what he had been told to say in case of anyone calling up on the phone, or if anyone came in, and he said several times, "Hooper & Klesner's Shade Shop," in response to Mr. Hawkins, and several times he said, "Hooper & Klesner." I think it was on one of those occasions she said to me, "You did say for us to say 'Hooper & Klesner's Shade Shop'." So I said, "Hush." That was all I said to her. That was all the words passed between us. In other words, I did not say anything at all. She made two remarks, to my knowledge, and one was about the shop, which I don't think I answered anything to.

Mr. AHALT. That is all.

Cross-examination by Mr. HAWKINS:

Question. Where is Mr. Hooper now?

Answer. To the best of my belief, he is in California.

Question. Whereabouts in California?

Answer. Well, I only know from hearsay where he is.

Question. Aren't you in communication with him every month?

Answer. No, indeed.

Question. How long has it been since you have been in communication with him?

Answer. Oh, about eight months, I think.

Question. Is he still a partner of yours?

Answer. No.

313 Question. When did you go out of partnership?

Answer. The third week in October, 1919.

Question. Did he go to California, then?

Answer. No, I think he went to Arizona. He wrote me from Arizona.

Question. There has been some testimony here that he is at Hollywood, Calif.

Answer. That is what I understand.

Question. You have not made any attempts to locate him at all?

Answer. No; I have not. I believe Miss Williamson writes to him occasionally.

Question. Since the time that you and he dissolved partnership, you have still continued to use the name of "Hooper & Klesner"?

Answer. Yes.

Question. Why have you done that?

Answer. Because I bought it.

Question. You bought it from him?

Answer. Yes, sir.

Question. Prior to the time that you bought out the trade name of "Hooper & Klesner," had you been trading together under that partnership name?

Answer. Since the spring of 1909.

Question. Where were you then, on Eleventh Street?

Answer. No, we were in Anacostia.

Question. When did you go to Eleventh Street?

Answer. I think it was in the early part of 1911, or the latter part of 1910. I have not looked the records up, but about that time.

Question. And you stayed there until you went to the corner of Twelfth and H?

Answer. Yes, sir.

Question. Now, as I understand it, neither at Anacostia, as I recall your answer to Mr. Ahalt, or at Eleventh Street, did you have any signs on your building concerning window shades. That is true, is it not?

Answer. None whatever.

Question. You did not have anything; window shades, or anything of that kind?

Answer. No, sir.

Question. And you did not have it on your letterheads or stationery, or anything of that kind?

Answer. No, sir.

Question. And it was after Mr. Sammons left you at Twelfth and H Street when you put on your letterheads something about manufacturing window shades?

Answer. Yes, sir.

Question. That was the first time you had started to manufacture them?

Answer. It was?

Question. Now, Mr. Klesner, how long had you known Mr. Sammons?

Answer. I got first acquainted with him some time in 1911, when he moved to Eleventh Street; shortly after he moved to Eleventh Street.

Question. Were you on Eleventh Street when he moved thre?

314 Answer. I think so.

Question. Are you sure about that?

Answer. Yes, I am pretty much sure. I don't like to say for sure, but I think he moved there while we were on Eleventh Street.

Question. Didn't you remember that he was there when you came there?

Answer. I do not think he was there.

Question. When you first knew him, he was on Eleventh Street, regardless of whether you came first or he came first, and he was trading under the name of "The Shade Shop." Was not he using that as his trade name?

Answer. He had it on his windows. That is all I know.

Question. You had a partnership name of "Hooper & Klesner," did you not?

Answer. Yes, sir.

Question. Didn't you know that Mr. Sammons was trading as "The Shade Shop"?

Answer. No, I did not know. I knew he had "The Shade Shop" on his windows, but I did not look in to see whether he called that his trade name or not.

Question. You had no knowledge of trade conditions, whereby you could ascertain whether Mr. Sammons was using the trade name of "The Trade Shop" at that time?

Answer. I did not.

Question. You did not?

Answer. I had no idea that was his trade name.

Question. You did not know anything about it?

Answer. No, sir; I knew he had "The Shade Shop" on his windows. That is all I knew.

Question. Did you know he traded as "The Shade Shop"?

Answer. I did not look into it, then.

Question. At any time; not then. You said, not then. At any time, did you know him to be trading as "The Shade Shop"?

Answer. I have know him, of course, since he moved down below me to trade as "The Shade Shop." That is the first time that he claimed we were using that name.

Question. When was the first time that you knew it; when it came to your attention that Mr. Sammons was using the trade "The Shade Shop"?

Answer. That was when we were sued.

Question. When you were sued?

Answer. Yes, sir.

Question. You never heard of it before?

Answer. I had seen his name on the windows, but I did not know he called it his name.

Question. You did not know he was trading under the trade name of "The Shade Shop"?

Answer. I did not know. At least, I did not look into it.

Question. I am not asking you whether you looked into it. I am asking you if you knew he traded under that name?

Answer. I knew he had that name. I did not know he was trading under it. I did not look into it.

Question. I do not want to argue with you, now. I only want you to tell me what you know. If you do not know, say so.

315 Answer. I do not know, then.

Question. So the first time that you knew that Mr. Sammons was trading under "The Shade Shop" was when he sued you in the Supreme Court?

Answer. Yes, sir.

Question. I have here respondent's Exhibit No. 6, which was produced by Mr. Ahalt, and identified by Mr. Sammons as being the lease that you entered into with Mr. Sammons at the time you went together at the corner of Twelfth and H. Streets. This lease starts out—the preamble is as follows:

"Made this 14th day of May, A. D. 1914 by and between Harry S. Hooper and Alfred Klesner, trading as Hooper & Klesner, parties of the first part, and W. Stokes Sammons, trading as 'The Shade Shop,' party of the second part, all of the city of Washington, District of Columbia."

It is signed by Harry S. Hooper and Alfred Klesner, trading as Hooper & Klesner. Is that your signature?

Answer. Yes, that is my signature.

Question. Is that Mr. Hooper's signature?

Answer. Yes, that is Mr. Hooper's signature.

Question. Below that is the signature, "W. Stokes Sammons, trading as The Shade Shop."

Answer. I see it there; yes.

Question. You see it there?

Answer. Yes.

Question. And it is witnessed by Katherine B. Williamson?

Answer. Yes, sir.

Question. Is that the Miss Williamson who was here?

Answer. Yes.

Question. Is that her signature?

Answer. Yes.

Question. And you want us to believe at this time that you did not know he was trading as "The Shade Shop"?

Answer. I told you I had never looked into it.

Question. I did not ask you about whether you looked into it.

Answer. I knew it was there, but I did not know; I was not sure.

Question. Do you want us to understand that on the 14th day of May, when you signed this lease, you did not know Mr. Sammons was trading under the name "The Shade Shop"?

Answer. I did not look into it. I did not consider The Shade Shop as a trade name.

Question. I am not asking you as to what you consider or what you looked into. I am asking you if you knew on the 14th day of May, 1914, that Mr. Sammons was trading under the name of "The Shade Shop"?

Answer. I know it, now, since you have called my attention to it.

Question. I am asking you if, on the 14th day of May, 1914, you knew it. Did you know it at that time that he was trading under the name of "The Shade Shop"?

Answer. I told you I was not sure, some time ago.

Question. You said you were not sure?

Answer. I believe I said I was not sure.

Question. Was not sure?

316 Answer. Yes.

Question. You gave this lease to Mr. Ahalt, didn't you?

Answer. Yes; I gave it to him.

Question. Now, during the time that Mr. Sammons was at Twelfth and H Streets with you, was he trading under any trade name?

Answer. Why, I do not know.

Question. You do not know?

Answer. No; I do not.

Question. You were occupying the premises?

Answer. Yes; I was occupying my side of it.

Question. Did you ever see any of his billheads or letterheads?

Answer. Yes.

Question. Did you ever see "The Shade Shop" on them?

Answer. I did.

Question. Did you ever see his advertisements in the newspapers?

Answer. No; I do not recall seeing any while he was with me.

Question. Did you ever see any of the mail that came there while he was there?

Answer. I do not know whether I did or not. It used to come in through the back door.

Question. Do you think now that you did or did not?

Answer. I do not think I ever handled his mail.

Question. I did not ask you that. I asked you if you saw?

Answer. I never seen enough of it to see what was on it. It usually came in through the back door. I was at my desk. I had no way of reading backwards. I had my desk here, and he was there——

Question. During the time that Mr. Sammons was there at Twelfth and H Streets with you and Mr. Hooper, did you ever see any mail come there addressed to "The Shade Shop"?

Answer. I may have. I may have seen it.

Question. And you may not have seen it?

Answer. I may not.

Question. You are not so positive, either way?

Answer. Six years ago is a long time to remember things.

Question. How many years has it been since you read that bill of complaint?

Answer. Well, that is about five years ago.

Question. You remember that very plainly, don't you?

Answer. Sure; it concerned me. Anything that concerns me, I have read, I think.

Question. Your memory is not at fault regarding what you said this morning about what was in that bill of complaint?

Answer. It is not. I read it several times.

Question. You do not know?

Answer. No.

Question. You never knew Mr. Sammons was trading under the name of "The Shade Shop" until he sued you?

Answer. I knew his billheads had "The Shade Shop" on, but whether it was his trade name or not, I did not know.

Question. During the time that he was on Fifteenth Street, occupying the same building with Mr. Derrick, you told Mr. Ahalt
317 this morning, that you placed all of your orders with Derrick. Is that correct?

Answer. We did. They were mostly phone orders, phoned to Mrs. Scott, and she took our orders and sometimes she switched us on upstairs.

Question. I understood you to say this morning to Mr. Ahalt that you placed all of the orders with Mr. Derrick personally. Is that correct?

Answer. Personally?

Question. Yes.

Answer. I do not think I said "personally." I said, "Luther L. Derrick."

Question. Did you ever place any with Luther L. Derrick in person?

Answer. We never went up there in person, I don't think. It was telephone orders, sent to go to so and so, measure the shades, because to make them, they would hang them for us, or have us to get them orders, and send them to us, or something.

Question. So that all of your dealings with Mr. Sammons or Mr. Derrick at that time were over the phone, were they not?

Answer. Must be, excepting Mr. Derrick came and collected the bills.

Question. I am talking about placing the orders.

Answer. Yes, mostly over the phone.

Question. Mostly over the phone?

Answer. Mostly over the phone, yes.

Question. Were they all over the phone?

Answer. It may have been all over the phone. For that matter, I did not attend to the shade end so much as Mr. Hooper, because it came more in his line than it did in mine.

Question. Did you ever go and give Luther L. Derrick an order for shades during that period?

Answer. I do not remember whether I did or not.

Question. Well, don't you think if you had you would remember?

Answer. That is possible. That is possible—I do not know whether I would or not. As I said before, Mr. Hooper attended to most of those orders. He may have gone up there personally several times.

Question. I am not talking about Mr. Hooper, but only about you, now, you understand. As a matter of fact, when you ordered shades, either you called up on the telephone and gave them, or Mrs. Scott?

Answer. Yes.

Question. When you got the bill who was the bill from?

Answer. Luther L. Derrick.

Question. Was it on his billhead?

Answer. I think it was, yes.

Question. Are you sure?

Answer. No, I am not sure.

Question. For the purpose of refreshing your recollection, were not they billed to you on "The Shade Shop" billheads?

Answer. They may have been.

318 Question. You told Mr. Ahalt this morning that Mr. Derrick billed them to you?

Answer. Yes, sir.

Question. Have you got any bills from Mr. Derrick for shades that you bought of him up there?

Answer. Five or six years ago, no. As I stated this morning, we destroyed all of our old stationery; all of our old mail and all of our old billheads up until 1919.

Question. Destroyed all of them, have you?

Answer. Yes.

Question. You are certain about that?

Answer. I think so. I can not find any. I was looking for some old letterheads old enough to come into this since Mr. Sammons left us, but did not find any that old.

Question. Respondent's Exhibits Nos. 9 and 10 do not seem to be destroyed. How did you get those respondent's Exhibits Nos. 9 and 10, which I find you received in the mail in 1915?

Answer. I will tell you in one second. I dug these out of the box containing the papers on this first suit between Sammons and myself, or Hooper & Klesner, and Sammons, at Mr. Gusack's office some time this spring, when I went down looking for papers.

Question. Who was Mr. Gusack? He was your lawyer, was he not?

Answer. Lawyer five years ago.

Question. You put those away to one side for the purpose of the lawsuit?

Answer. I put them down there to answer one of the complaints that we were not trading as "The Shade Shop."

Question. Put them aside for evidence?

Answer. Yes.

Question. You did not put aside any of the bills that came to you from Luther L. Derrick Co.?

Answer. It was not necessary. Luther L. Derrick was there himself.

Question. I think you told Mr. Ahalt that this E. Arnold Nice Co., which is shown on Respondent's Exhibit No. 9—that you had been up there to Baltimore to do some business with them within the last year or so. Is that correct?

Answer. It is.

Question. What business are they in?

Answer. I suppose he is in the business of selling shade cloth. I bought two bolts of shade cloth in the store, and took them away with me.

Question. When was that?

Answer. About a year ago.

Question. Are they still in business up there?

Answer. I do not know.

Question. Have you had any business relations with them since?

Answer. I have not.

Question. Now, don't you know as a matter of fact, Mr. Klesner, that the E. Arnold Nice Co. has been out of business for over four years?

Answer. Not at all. I don't know.

319 Question. You were not mistaken when you said they were in business a year ago, then?

Answer. I do—I know they had on signs above the door. That is all I know.

Question. You would know whether they were?

Answer. I do not know whether Arnold Nice was there personally, or whether the business had been sold and still carried on under the name of E. Arnold Nice Co. or not, but I know that Lapsley—what is his name—Mr. Kelly, of Lapsley & Bro. there, was out of a certain piece of goods and took me around there and helped me to get two pieces of goods from Arnold Nice, and he said personally, he says, "Let us go to Arnold Nice and get it."

Question. Do you know now where you did get them, and if you do, was it from E. Arnold Nice Co., or not?

Answer. I got them in the store. I never been in the store early or later, except what dealings I had through the mails some years ago, but that is the first time I knew where his store—that is the first time I have been in that store with that name over it.

Question. Who was it that took you there?

Answer. Mr. Kelly. He is sales agent, or something.

Question. For whom?

Answer. Lapsley.

Question. For Lapsley & Bro. Co.?

Answer. Yes.

Question. He took you around the corner?

Answer. Yes; right around the corner.

Question. As a matter of fact, is not his office and the E. Arnold Nice Co.'s office right on the same street?

Answer. No, sir.

Question. You think not?

Answer. No, sir; around the corner. There is another shade, wholesale shade place on this same block.

Question. I am only talking about the ones you have referred to, respondent's Exhibits Nos. 9 and 10. The address of Lapsley & Bro. Co. is 24 Hopkins Place, and the address of E. Arnold Nice Co. is 118 Hopkins Place. You think they were around the corner, and not on the same street?

Answer. I know they are around the corner. I don't know they were around the corner five years ago, but they were last year.

Question. You said that Miss Williamson, when she was here the day before yesterday and testified that after Mr. Sammons left

Twelfth and H Street, that you had on your letterheads and billheads "Shade Shop"—she was mistaken in that?

Answer. Yes. I did not see any "Shade Shop" on them—never had ordered any put on.

Question. She is the stenographer there for you, is she not?

Answer. Yes.

Question. She makes out the bills, does she not?

Answer. She does.

Question. And attends to the correspondence?

Answer. She does.

Question. She has charge of your billheads and letterheads?

Answer. Yes, sir.

320 Question. Do you want the commission to believe that she was mistaken in what she said?

Answer. She must have been.

Question. She was mistaken?

Answer. Yes.

Question. The Farragut Apartments here, that you testified to this morning, I understood you to say that they were regular customers of yours?

Answer. Yes, sir.

Question. And that you sell them practically once a week?

Answer. Yes, in the fall season we do, largely, I think I mentioned.

Question. I understood you to say to Mr. Ahalt this morning that you sold them on an average of once a week the year around. Is that correct?

Answer. An average; yes.

Question. About how many shades do you sell them once a week?

Answer. Sometimes it will be 6 or 8 shades and sometimes it will be 15. Sometimes it will only be 1.

Question. How many apartments are there in the Farragut Apartments?

Answer. Seventy-two.

Question. I hand you commission's Exhibit No. 12, which is a page from one of the telephone directories. At the bottom of the right-hand page there is a listing there of "Shade Shop, Hooper & Klesner." That is correct, is it not?

Answer. It is.

Question. That was originally put in at your request, was it not, that sublisting?

Answer. I think so. I think we ordered that put in; yes.

Question. You also told Mr. Ahalt that it was the same listing as in commission's Exhibit 13. It is not in the same place, but that it is the same.

Answer. Yes, that is right. Both of them are the same.

Question. Then, in commission's Exhibit 11 is where it appears, "Shade Shop" without "Hooper & Klesner"?

Answer. Yes.

Question. That is the one that you testified that you did not ask or request them to drop the "Hooper & Klesner" from. That is correct, is it not?

Answer. That is correct.

Question. That is what Mr. Hunt said when he testified as to how that came about?

Answer. Yes, sir.

Question. Did I understand you to say this morning that you had requested the telephone company to remove from their directory the listing "Shade Shop" that is shown in commission's Exhibit No. 11?

Answer. I have.

Question. When was that?

Answer. About six weeks ago.

Question. How was it done?

Answer. How was it done?

321 Question. How was the request made?

Answer. Oh! When this case here first came to my knowledge, when I got notice from the Federal Trade Commission, I commenced to look over and see whether we had done anything that was not right, and that was the first time that I noticed it, in the phone book, that our name had been omitted from the words "Shade and I called up the telephone company, contract department, and whoever came to the phone there, I commenced to ask about that, why they had eliminated that, and he said he did not know anything about it and switched me onto another man, and he told me then that they had cut the book down a whole lot, and said, "You are not the only sufferers," and he would come around and see me about it. I says, "Why, I want to do a lot of advertising when we move to another place, and you have omitted our name entirely." So he offered to send some one or come himself, or send some one around to see me.

Question. Did they?

Answer. They did. A man from Baltimore came in from the book department. At first I asked him why he had eliminated our name entirely from the listing under "painters" and he said they had in the past been very liberal to listings and had listed heretofore nearly every branch of the business houses, but we had three listings, he said, one under "window shades," one under "painters," and one under "wall papers," and they were compelled to take one of them out, so they took the "painters" off, and in addition they reduced the listing under "window shades" to what you see there, in this exhibit there.

Question. Was that all the conversation?

Answer. No. Then I requested him to take the words "Shade Shop" off the listing entirely, and give me a listing under "painters."

Question. Give you a listing under "painters"?

Answer. Under "painters," and then that listing; I had no "window shades," so that I would have a listing under "painters" and "wall papers," both.

Question. Was that the time you requested to have a listing changed from "painters" to "decorators"? Was that the same time?

Answer. No; I think I had the name I was entitled to, striking off on the "window shades" under "decorators" and contract a large ad under "painters"—a paying ad—which I could have for the money. That is the way I think it was.

Question. Let us cut out the paid ad. Before this conversation you were listed two ways, were you not?

Answer. Yes.

Question. You were listed "Hooper & Klesner, Painters," under the "H's"?

Answer. I think they destroyed that. It may have been listed in the front. I am talking about the commercial part of the book.

Question. I am not talking about the commercial part. You were listed under "Hooper & Klesner, Painters." And then you had a listing like this in commission's Exhibit No. 11, "Shade Shop"?

Answer. That may be true. I have not looked in the front of the book.

322 Question. Mr. Hunt testified that in February of this year you requested them to change the main listing of "Hooper & Klesner, Painters," to "Hooper & Klesner, Decorators." Did you make that request?

Answer. Not under the main part of the book. Under the commercial part.

Question. In the commercial part?

Answer. Yes, sir.

Question. You did make the request?

Answer. Yes, sir.

Question. To be changed from "Hooper & Klesner, Painters," to "Hooper & Klesner, Decorators"?

Answer. No, we were not under "painters," at all. I told you a minute ago we were not listed under "painters." They had omitted that in the last issue. That was the reason I called to see him personally.

Question. Then, when Mr. Hunt testified that you did request them to have their listing of "Hooper & Klesner, Painters," changed to "Hooper & Klesner, Decorators," he was mistaken about it, was he?

Answer. I do not remember him saying that.

Question. You were in the court room?

Answer. Yes, I was, but I don't remember.

Question. If he did say it he was mistaken?

Answer. He must have been. It is not there. The evidence is there in the telephone book.

Mr. AHALT. I think the witness is confused as to the listings in the main part of the book and the classified part.

The WITNESS. That is what I am talking about.

Mr. HAWKINS. Let us find out what he does know.

Question (by Mr. HAWKINS). Do you recall that Mr. Hunt testified here that there never had been a request made to withdraw the listing "Shade Shop" as it appears here in commission's Exhibit No. 11?

Answer. I may be mistaken in that.

Question. You remember that?

Answer. Yes.

Question. He was mistaken when he said that?

Answer. That was not the only mention. He also mentioned that it may have been done without his knowledge.

Question. At the time when you pulled that gun down there that Sunday morning, concerning which you testified this morning, you said that they "came in four strong."

Answer. Yes, sir.

Question. Who were the four?

Answer. Why, I do not know the name of the fourth man. If I do I have forgotten it, but three of them were, W. Stokes Sammons, and Horrigan, and Jim Mann, and the fourth fellow, whoever he is, he is now employed by the fire department.

Question. The fourth man is employed by the fire department now?

Answer. Yes, sir.

Question. Did he ever work for Sammons?

Answer. He did.

323 Question. They were all four of them connected with Mr. Sammons's business there?

Answer. Why, I do not know whether they were connected at that time, but this fellow had been driving a truck for Sammons for a little while. That is all I know. He was not a shade man. He was helping them to move that morning. That is all I know.

Question. I asked you if he ever worked for Sammons?

Answer. I think he had employed him the last couple of months, or so, driving a truck.

Question. Did he do anything else besides drive a truck?

Answer. No; not that I know of.

Question. So that, when you testified this morning that Mr. Sammons had work for only one man and a boy, you were mistaken, were you not?

Answer. No, sir; I was not.

Question. You were not?

Answer. No, sir.

Question. He did have more than one many and a boy working for him?

Answer. I believe my testimony said that he had sometimes one man and a boy; sometimes only one man; sometimes two or three

in the fall season, and averaged up about two men the year around, I believe.

Question. He averaged up more than one man and a boy the year around, didn't he?

Answer. Averaged up two men, you may call it. Only one man. I suppose the boy counted as a man.

Question. What would you say? Was it a boy or a man?

Answer. A boy.

Question. Your memory is clear on that, is it?

Answer. Yes, sir, a young fellow; very young.

Question. You were here, of course, when Mrs. Bowie and Mr. Goff and Mr. Shelton and Mrs. Lines testified and heard their testimony. You do not want the commission to understand that what they said was not true, do you?

Answer. I do.

Question. You want the commission to understand, then, that whatever testimony Mrs. Bowie and Mr. Bowie and Mr. Shelton and Mr. Goff and Mrs. Lines gave, that they were mistaken, too?

Answer. Absolutely.

Question. And is anybody else on the mistaken list

Answer. I believe you mentioned them all, haven't you?

Question. I am asking you if you recall any one else that was mistaken?

Answer. If you will mention more——

Question. You would say they were mistaken?

Answer. If you would mention more—if I can remember their testimony, and it was a mistake, I will say they were mistaken; yes, sir.

Question. Do you think Mr. Goff was mistaken?

Answer. I do not recall what he said.

Question. You told me a minute ago that he was mistaken.

Answer. I presume what he was asked and what they were asked that is the questions which I am answering here.

324 Question. Was Mr. Etchinson mistaken, too?

Answer. I do not think he said anything that he could be mistaken about except the fact that he was gotten up at 6 o'clock in the morning; I don't know. All I know is what Mr. Marceron—is what he told me about when he got there.

Question. You heard Mr. Etchinson's testimony, and you said that these other people that testified for the commission were all mistaken. What do you say about him?

Answer. I did not transact any business with Etchinson at all.

Question. I am asking you whether he was mistaken in his testimony?

Answer. I have no thought about it at all. I didn't have any——

Question. That is all I want. You have no thoughts?

Answer. No thoughts at all.

Question. What was the thought you had this morning when you told Mr. Ahalt in reference to Mr. Etchinson about when the bill went to him it would be corrected. What was your thought then?

Answer. I don't remember any question like that being asked.

Question. Do you recall saying to Mr. Ahalt this morning that the bill to Mr. Etchinson had to be corrected?

Answer. No, sir; I do not.

Question. Did it have to be corrected?

Answer. I do not recall your asking any questions——

Question. I am asking you for the fact now. You say you don't recall that. I ask you: Did the bill have to be corrected?

Mr. AHALT. He said he did not recall.

Mr. HAWKINS. First he said he did not recall having said so, and now I am asking him for the fact.

Question (by Mr. HAWKINS). Now, let us get the facts. Did the Etchinson bill have to be changed for any reason?

Answer. No, I do not think so. I did not handle the bill.

Mr. AHALT. He did not write the bill.

Mr. HAWKINS. The record will show, when it is printed.

Question (by Mr. HAWKINS). This lease, which is respondent's Exhibit No. 6, who drew that lease?

Answer. Mr. Quigley.

Question. Who is Mr. Quigley?

Answer. He is a lawyer. I do not know his initials, but I think you will find them on there.

Question. Was he representing you and Mr. Hooper when the lease was drawn?

Answer. I think he represented Sammons.

Question. Do you know?

Answer. I think he represented both of us.

Question. Was not Mr. Quigley your lawyer at that time; you and Mr. Hooper's attorney at that time?

Answer. No. Mr. Quigley—I think Mr. Sammons got the order; drew the order up. He paid half and we paid half.

Question. Did Mr. Quigley ever attend to any of your legal business?

Answer. Yes, sir.

Question. When?

Answer. Since—that is how I got acquainted with him.

325 Question. Had he ever done it before that?

Answer. No, sir; did not know him before that.

Question. One of the exhibits this morning that Mr. Ahalt presented you with was a letter from Stewart Hartshorn Co. Who are they?

Answer. A manufacturing concern. Manufacturers of shade rollers; window-shade rollers.

Question. Window shade what?

Answer. Window-shade rollers.

Question. What else?

Answer. Lately they have acquired a factory of window shades, too. I do not know how much they do. I know we buy rollers of them.

Question. How long have you been buying rollers from them?

Answer. Since we have commenced to make shades; in the fall of 1915, around Christmas time.

Question. That was the time Mr. Sammons left?

Answer. Yes, sir.

Question. You never had any dealings with them before that?

Answer. No, never before that.

Question. Now, the Sunday that you had the trouble down there and you pulled the gun, and then Mr. Sammons had you arrested; did you know that Sunday morning that Mr. Sammons was going to leave and go down the street?

Answer. No, sir; I did not. I thought he was going to leave Monday.

Question. When was the first time that you knew he was going to leave?

Answer. I think it was Friday preceding this.

Question. Preceding Sunday?

Answer. Yes, sir.

Question. Then you did know Sunday morning that he was going to leave?

Answer. Yes, but I did not know he was going to leave on Sunday.

Question. My question to you was not if he was going to leave on Sunday, but if you knew that he was going to leave?

Answer. I knew he was going to leave; yes, sir.

Question. You did not know the exact date?

Answer. I know he was going to leave the first.

Question. Going to leave the first?

Answer. Of January.

Question. Now, after he did leave, did you ever make any claim to him for damages for breaching of the lease?

Answer. We did not.

Question. Did you ever make any claim on for the rent for the unexpired term?

Answer. We did not.

Question. What was your objection to his removing the sign when he left?

Answer. It was Sunday. I did not like the idea of having the windows smeared up on Sunday. That was the main object.

Question. That was what caused you to pull the gun, was it not?

Answer. Yes, sir.

326 Question. There was not anything else between you except that one thing?

Answer. No, not a thing.

Question. I think you told Mr. Ahalt yesterday that you were considerably upset?

Answer. Why, yes, sure, after being down to the station house for two hours.

Question. What did you mean when you said you were upset?

Answer. I did not say I was upset.

Question. I thought you said you were considerably upset?

Answer. I said the captain said I was considerably upset and I better not go by there.

Question. Were you upset?

Answer. I may have been upset to some extent.

Question. What do you mean by "upset"?

Answer. What is the meaning of upset?

Question. I am asking you what you mean, not what I mean.

Answer. Upset—I suppose a little high strung; being a little hot under the collar, and so forth.

Question. Were you hot under the collar?

Answer. I don't deny that. I think I was.

Question. Have you got that gun with you that you had?

Answer. Have I, you say?

Question. Yes.

Answer. No, I don't want to break the laws of the District.

Question. Have you had it at any time that you have been up here?

Answer. No, no.

Question. You are not a gunman?

Answer. No, sir.

Question. Not a bad man of Washington?

Answer. Oh, no. I did not have it on my person at all, for that matter. I had it in the drawer.

(Discussion off the record.)

Mr. HAWKINS. I think that is all I want to ask him.

Redirect examination by Mr. AHALT:

Question. I will ask, Mr. Klesner, about Mrs. Bowie, and so forth. Mr. Klesner, when Mr. Hawkins asked you about Mrs. Bowie and Mr. Bowie and Mr. Shelton and others, who have testified here, as having made purchases at your place of business, you said that you believed they were mistaken. What do you base that belief on?

Mr. HAWKINS. I object to that for the reason that I did not say anything about his belief, and he did not say his belief.

Question (by Mr. AHALT). Well, why do you think they were mistaken, Mr. Klesner?

Answer. They were mistaken in the part that they claimed, the answer they got when they got in the store, to the questions they asked. I base that on the fact that I have given instructions to the very opposite, and whenever I have been in the store and my employes or Mr. Hooper has waited on people or answered people to

the question, Was Mr. Sammons in? or whether this was The
327 Shade Shop, I have always heard the answer given as we had ordered, that it was not his place.

Mr. AHALT. That is all.

Recross examination by Mr. HAWKINS:

Question. That is the reason you say they were mistaken?

Answer. In that part of it; yes, sir.

Question. It could not have happened the way they said?

Answer. Not possible with my employes.

Question. I hand you respondent's Exhibit No. 15, to which you have testified this morning, which is a letter from Edson W. Briggs under date of September 1, 1920, addressed to Hooper & Klesner, and which is for an estimate on some shades. Did you fill that for Mr. Briggs?

Answer. I do not know.

Question. Have you ever done any work for Mr. Briggs?

Answer. I do not know. I do not run the shade department, and very little I look into it. That is left entirely to Mr. Marceron. If you would have asked him yesterday he would have told you, I am sure.

Question. I did not have it yesterday.

Answer. No; I say I did not know that.

Question. You own the business, don't you?

Answer. I do.

Question. Is anybody else connected with it?

Answer. No, sir.

Question. Do you know whether or not Mr. Briggs is a shade customer of yours?

Answer. No; I can not say I do. I do not know. We have lots of customers that I know nothing about.

Question. Would you say that he was or was not a regular customer of yours?

Answer. I would not say. I only know I was looking for a request for estimates and took this paper out. I did not even stop to ask Mr. Marceron had we ever filled that or not. I did not look into it; I suppose I could find out by looking over the books whether we did or not.

Question. Now, you have respondent's Exhibit 17, a request from the National Park Seminary for a quotation. Is the National Park Seminary a customer of yours? Do they buy shades from you? Are they still customers?

Answer. I do not know that.

Question. Well, I understood you to tell Mr. Ahalt this morning that these people were customers.

Mr. AHALT. I did not ask him that.

The WITNESS. I did not say that. He did not ask me whether they were my customers. He asked me if this was our letter; had been sent to us, and I said yes, identified the letter.

Question (by Mr. HAWKINS). You can identify the letter, all right?

Answer. Yes, sir.

Question. How do you identify it?

Answer. If our name is right there; right on the front of it.

328 Question. What would you say as to the Southern Railway System, which is respondent's Exhibit No. 18?

Answer. I would say they are regular customers of ours.

Question. They are regular customers of yours?

Answer. Yes, sir.

Question. You know that?

Answer. Because this is an order. I have had a number of occasions—I open sometimes the mail—I have had occasions to see several of these orders come in.

Question. How long have they been shade customers of yours?

Answer. I do not know. Several years, I guess.

Question. How many? Did you say seven?

Answer. Several years. I can not say exactly whether they were one year or four years. I have seen those for a long time; these orders come in.

Question. Were they ever customers when you were over on Eleventh Street?

Answer. No; we were not making shades in those days.

Question. Were they customers of yours before Mr. Sammons left you?

Answer. No; I do not think so.

Question. Now, what would you say about the Fruit Growers' Express, which is respondent's Exhibit No. 19, as to their being a customer of yours?

Answer. They are customers, from this paper here. This is an order.

Question. How long have they been customers of yours?

Answer. I do not know.

Question. What is your recollection?

Answer. I have no recollection. As I said before, I do not go very much in the letter file or order file of the shade department. I leave that to Mr. Marceron entirely.

Question. When it comes to collecting the money for the bills, how is that done?

Answer. By mail; send the bill and get the check.

Question. Do you deposit the check?

Answer. Miss Williamson deposits the checks.

Question. You have to indorse them, don't you?

Answer. No, sir; I have a stamp.

Question. Don't you know who your customers are?

Answer. I know a great deal, and I don't know as much about my window-shade customers as I do about my wall papering, and

I do not know as much about my wall-papering customers as I do about my painting, because I attend to the painting entirely myself. Mr. Blundon, who testified yesterday, attends to the wall papering, largely.

Question. Do you think that the Fruit Growers' Express Co. was a shade customer of yours prior to the time Mr. Sammons was with you on Twelfth Street?

Answer. I do not think so.

Question. What would you say about the Treasury Department shown here in respondent's Exhibit No. 20?

Answer. We have delivered several orders to the Treasury Department.

329 Question. For how long a time have the been customers of yours?

Answer. I do not know.

Questiton. What is your recollection, if you have any?

Answer. If I had my old files I could have found out for sure.

Question. Were they customers of yours when you were on Eleventh Street?

Answer. No, sir.

Question. I now hand you commission's Exhibits Nos. 34 to 41 inclusive, which are postal-card orders for shades from various people, here in Washington, addressed to "Shade Shop" and "The Shade Shop." This morning, when you were being questioned by Mr. Ahalt, you identified certain of them as being customers of yours.

Answer. Yes, sir.

Question. I failed to make a note of the ones you identified. Would you again pick them out, the ones that you say are customers of yours?

Answer. There is one [indicating].

Question. Who is it?

Answer. E. O. Wagenhorst.

Question. That is commission's Exhibit No. 34, Wagenhorst. How long has he been a shade customer of yours?

Answer. Practically since we rented from him in 1914.

Question. That is when you went into the corner at Twelfth and H Streets?

Answer. Some little time after that.

Question. Now, what is the next one you find there?

Answer. Commission's Exhibit No. 35.

Question. Who is that?

Answer. Stone & Fairfax.

Question. How long have they been shade customers of yours?

Answer. Never.

Mr. AHALT. Let the witness understand the question. He only asked you to pick out the ones that were customers.

Question (by Mr. HAWKINS). I only asked you to pick out the ones that were.

(Discussion off the record.)

The WITNESS. Commission's Exhibit No. 33, Weaver Bros.

Question (by Mr. HAWKINS). How long have Weaver Bros. been customers of yours?

Answer. Somewhat over two years.

Question. Well, has it been three years?

Answer. No; maybe two years and three months.

Question. What is the next one?

Answer. You mean in the shade business, don't you?

Question. Shade customers only, yes; not interested in anything else.

Answer. Seems to be duplicates here. These are all duplicates.

Question. How much work have you done for Weaver Bros.?

Answer. In the shade business?

Question. In the shade business. I am confining all of this to shades now.

Answer. I am unable to state at this time. I can not say.

330 Question. You said they have been customers of yours. Have you ever sold them shades more than once?

Answer. Yes, sir.

Question. How many times more than once?

Answer. Oh, I have sold them shades over 20 times. Some by orders and some by estimates.

Question. Any of them in writing?

Answer. They were all on a certain form they have in their store to send out orders on.

Question. You think you got about 20 of those?

Answer. I have not any of these orders now. I did have all of these orders and executed them. After they came in we returned them with the bills.

Question. Didn't you keep the orders?

Answer. We returned the bills, which was requested on the order to return it with the bill.

Question. Do you have anything in your office to show when you got those 20 orders from Weaver Bros.?

Answer. I suppose so; either ought to be in the books——

Question. What would be there?

Answer. Would be, furnished home so-and-so for Weaver Bros.

Question. Where would it be in the book?

Answer. Where would it be in the book?

Question. How far back do your books go?

Answer. We have 1919 and 1920, I believe, both. I think we have two years back. That is all.

Question. Well, you told me that Weaver Bros. have only been a customer of yours about two and a half years, so they would be in that two and half years period?

Answer. Yes, sir.

Question. Can you bring your books up here to-morrow and show the 20 orders?

Answer. I do not know as I can show you 20 orders. I say it is my recollection. I have told you several times that I do not go into the shade department so thoroughly that I can testify exactly how many orders we got from Weaver Bros. for shades, but I know we got a number of them.

Question. During the period that you and Mr. Sammons occupied the same premises at Twelfth and H Streets, what was the understanding or arrangement about the shade business that came in to the store? Were you to have it or was he to have it?

Answer. We agreed that any current trade coming in was to go direct to him and any customers we got hold of on the outside we were to get our rake-off.

Question. Any customers that you got on the outside you were to get your rake-off?

Answer. Well, if you will call it that.

Question. Mr. Sammons made the shades and then you charged a commission. That is what you mean by rake-off?

Answer. He gave them to us cheaper than he sold them to other people.

Question. But all other shade business went to him, did it not?

Answer. All of it went to him.

331 Question. But you got a commission on some of your regular customers?

Answer. Yes; on what we got hold of; from what new customers we got hold of on the outside. We agreed that any current trade coming in the store he was to have.

Question. Was not there any competition in that store between you and Mr. Sammons?

Answer. Not at all. We called him in in every instance, if he was there, to wait on the customers.

Question. There were not two firms operating in shades there?

Answer. No.

Question. It was all Sammons's?

Answer. All what?

Question. All The Shade Shop or Sammons or whatever it is?

Answer. Yes.

Mr. HAWKINS. That is all.

Mr. AHALT. That is all.

(Witness excused.)

(Discussion off the record.)

Examiner DUNHAM. The hearing is now concluded and briefs by both sides will be filed with the commission by June 1.

(Thereupon, at 3.15 o'clock p. m., the hearing in the above-entitled matter was closed.)

Reporters' certificate

HULSE & ALLEN, OFFICIAL REPORTERS,
Whitford Bldg., Washington, D. C.

This is to certify that the within proceedings before the Federal Trade Commission in the case of Federal Trade Commission v. Alfred Klesner, doing business under the trade name and style of Shade Shop, Hooper & Klesner, Docket No. 696, were had as herein appears, and that this is the original transcript thereof for the files of the commission.

HULSE & ALLEN, *Official Reporters.*

212 Before the Federal Trade Commission

[Title omitted.]

FEDERAL TRADE COMMISSION BUILDING, ROOM 2702,
Washington, D. C., Thursday, June 23, 1921.

Met pursuant to the order of the Commission, at 2 o'clock p. m.

Before: Examiner J. J. Dunham.

Appearances: Mr. Gaylord R. Hawkins, appearing on behalf of the commission.

PROCEEDINGS

Examiner DUNHAM. Yesterday I was called by Mr. Clarence R. Ahalt, counsel for the respondent, over the telephone, and he told me that he did not wish to be here and he authorized me to proceed with this hearing in his absence.

Mr. HAWKINS. Now, if it please the examiner, after the order of the commission was entered reopening this case for the introduction of newly discovered evidence at this time and place, I caused a subpœna duces tecum to be issued for Mr. E. M. Johnson, of the Chesapeake & Potomac Telephone Company, at Baltimore, Md., whom I expected to use as my witness at this hearing, and on June 21 the commission received a letter from Mr. F. A. McNally, sales manager of the Chesapeake & Potomac Telephone Company, returning the subpœna and setting forth the reasons for its return, and advising that Mr. Johnson's whereabouts were unknown, and that he would not be available as a witness until about the 15th of July.

I now offer in evidence this letter which has been marked for identification as Commission's Exhibit No. 73.

Examiner DUNHAM. It will be received in evidence.

(Thereupon, the paper so offered and identified was received in evidence, marked "Commission's Exhibit No. 73," and the same is forwarded herewith.)

Mr. HAWKINS. If it please the examiner, inasmuch as Mr. Johnson is the only witness that I desired to present, and as this letter will show that it is impossible for us to get service upon him until

about the 15th of July, I ask your honor to continue this hearing until some time after the 15th of July, if it will be agreeable to you.

Examiner DUNHAM. Mr. Ahalt also said to me in that telephone conversation yesterday that any day after the 15th of July would be satisfactory to him for this testimony to be taken.

It is therefore ordered that this hearing be had in this office at 2 o'clock in the afternoon on Monday, July 25.

The hearing will be adjourned.

(Thereupon, at 2.05 o'clock p. m., the hearing in the above-entitled matter was adjourned until the 25th of July, at 2 o'clock p. m.)

OFFICIAL REPORT OF PROCEEDINGS before the Federal Trade Commission. Docket No. 696. In the matter of Federal Trade Com-
333 Commission v. Alfred Klesner. At Washington, D. C. Date, August 5, 1921. Pages 696. Sidney C. Ormsby Company, Official reporters, 18 Vesey Street, New York.

This is to certify that the within proceedings before the Federal Trade Commission in the case of Federal Trade Commission v. Alfred Klesner, Docket No. 696, Washington, August 5, 1921, were had as herein appears, and that this is the original transcript thereof for the files of the commission.

SIDNEY C. ORMSBY COMPANY,
Official Reporters,
By LUCIUS M. MCCULL.

Docket 696

WASHINGTON, *August 5, 1921.*

Met pursuant to adjournment, 11 a. m.

Before: George McCorkle, examiner.

Appearances: Mr. Gaylord Hawkins, for the commission; Mr. Clarence R. Ahalt, for the respondents.

Mr. HAWKINS. If it please the examiner, the witness, E. M. Johnson, who did not appear at the last hearing and whose absence was the cause of the continuance of this matter until to-day, I find that I am unable to locate. I have endeavored to get service of a subpœna on him, but have failed, and so I am not able at this time to have him before you to testify in regard to a certain advertisement which appeared in the spring issue for 1921 of the Chesapeake & Potomac Telephone Co.'s telephone directory for the city of Washington, D. C.

Mr. AHALT. Mr. Examiner, I will say on behalf of the respondent, in connection with the evidence proposed to be introduced by the commission, that the respondent, for purposes of closing this testimony and having the full facts before the commission, will admit that the advertisement appearing on page 446 of the spring issue for 1921 of the Chesapeake & Potomac Telephone Co.'s directory in the classified section thereof is an advertisement paid for by the respondent and one contracted during the month of January or February,

1921, and which directory was not published and distributed until some time during the month of May, and we have no objection to that page of said directory being introduced and put into the record as marked Exhibit 74.

Mr. HAWKINS. With that understanding I now mark it "Commissioner's Exhibit 74."

(The exhibit referred to was marked "Commissioner's Exhibit 74" and was received in evidence.)

Mr. HAWKINS. I rest.

The EXAMINER. Thirty days will be allowed attorneys after the expiration of the time allowed to file exceptions to the examiner's findings, within which to file their briefs. Do you desire to introduce any testimony on behalf of the respondent?

Mr. AHALT. No, sir.

The EXAMINER. If not, that closes the case on the part of the commission and the respondent.

(Thereupon, at 11.30 o'clock a. m., the above hearing was concluded.)

334 Original (1)

OFFICIAL REPORT OF PROCEEDINGS before the Federal Trade Commission. Docket No. 696. In the matter of Federal Trade Commission vs. Alfred Klesner (The Shade Shop). At Washington, D. C. Date July 26th, 1921. Pages 836. Sidney C. Ormsby Company, official reporters, 18 Vesey Street, New York.

This is to certify that the within proceedings before the Federal Trade Commission in the case of Federal Trade Commission vs. Alfred Klesner (The Shade Shop), Docket No. 696, Washington, D. C., July 26th, 1921, were had as herein appears, and that this is the original transcript thereof for the files of the commission.

SIDNEY C. ORMSBY COMPANY,
Official Reporters,
By M. E. MURRAY.

Docket 696

WASHINGTON, D. C., *July 26, 1921.*

Met pursuant to adjournment, 11 a. m.

Before: George McCorkle, examiner.

Appearances: Mr. Hawkins, for the commission; Mr. C. R. Ahalt, for the respondents.

Mr. HAWKINS. If it please your honor, on Friday last, I issued a subpœna duces tecum for Mr. E. M. Johnson, who is connected with the Chesapeake & Potomac Telephone Company, at their Baltimore office. I subpœnaed him to appear before Examiner McCorkle at 11 o'clock this morning. The docket division shows the return receipt for the registered letter containing the subpœna.

Mr. Johnson has not appeared. I have heard nothing from him or from his office. I now ask for a continuance until 11 o'clock to-morrow morning, in order that I may get in touch by long distance telephone with the witness and ascertain the cause of his not being here. I shall make every effort possible to have him here to-morrow morning at 11 o'clock.

Examiner McCORKLE. This course will be taken, adjournment had until to-morrow morning at 11 o'clock.

(Whereupon at 11.30 a. m. an adjournment was taken until 11 a. m., July 27, 1921.)

Commission Exhibit No. 1

Received of Mr. John Henderson Fourteen Dollars in full for shades Irving st. near 16.

THE SHADE SHOP
Per SAMMONS
1222-H st. N. W.

DEC 4/09

---

335 *Commission's Exhibit No. 2*

MAY 28, 1910

Mr. John Henderson To The Shade Shop Dr. 724 11 St. NW

To 78 shades 60¢	$46.80
" 60 " 40¢	24.00
	70.80
By cash	60.00
Bal	10.80

[Indorsed:] Paid The Shade Shop

Commission's Exhibit No. 3

WASHINGTON, D. C., *June 21, 1910*

Mr. John Henderson Dr., to The Shade Shop Exclusive Manufacturers of Window Shades 724 Eleventh Street N.W.:

To 17 shades corner house @ 55¢	9.35
" 24 shades front @ 55¢	13.20
" 24 " back " 40¢	9.60
Total	32.15

30 @ .55 ..... 16.50
35 @ .40 ..... 14.00
50.50

[Indorsed:] Paid in full The Shade Shop

Commission's Exhibit No. 4

Phone Main 5901

WASHINGTON, D. C., *Oct. 15 1910*

Mr. John Henderson Dr., to The Shade Shop Exclusive manufacturers of Window Shades 724 Eleventh Street N.W.:

To 5 houses Kalorama Ave. as per estimate	$66.00
" 5 Din Room shades as per estimate $2.25	11.25
	$77.25

[Indorsed:] Paid The Shade Shop

Commission's Exhibit No. 5

Phone Main 5901

WASHINGTON, D. C., *Jan 12, 1911*

Mr. John Henderson Dr., to The Shade Shop Exclusive manufacturers of Window Shades 724 Eleventh Street N.W.:

To 48 Shades 55¢	$26.40
" 4 " 2.00	8.00
" 1 "	1.25
" 41 " 40	16.40
	$52.05
By cash	30.00
Bal	$22.05

[Indorsed:] Paid The Shade Shop, 724 11 St NW. K.

---

336 *Commission's Exhibit No. 6*

Telephone Main 5901

WASHINGTON, D. C., *Nov. 7, 1910.*

Mr. John Henderson Dr. to The Shade Shop Exclusive manufacturers of Window Shades 724 Eleventh Street N. W.:

3 homes on 2nd St. 42–36" Shades 55	$23.10
" " " " " 6–44" " 90	5.40
Corner House 2nd & Fla. 20 " 55	11.00
5 houses 13 Sh each 65 " @ 55	35.75
	75.25
	25.
	50.25
	25.
	25.25

Commission's Exhibit No. 7

Telephone Main 5901

WASHINGTON, D. C. *July 14 1912*

Mr. John Henderson Dr. to The Shade Shop Exclusive manufacturers of Window Shades 724 Eleventh Street N. W.:

Shades as per est	$27.00
Paid	15.
	12.00
Pd	10.00

Commission's Exhibit No. 8

Phone Main 5901

At the Sign of The Shade Shop

Exclusive Manufacturers of Window Shades. Office and Show Room, 724 11th Street N. W.

WASHINGTON, D. C., *July 28, 1911.*

Mr. JOHN HENDERSON
DEAR SIR

I will furnish Fifty Four Window Shades (54) to your new residence in Chevy Chase, using Best White Scotch Holland for the sum of Fourty Two Dollars ($42.00)

If cream or Ecru is to be used the above will cost $44.00 Fourty Four Dollars

If Dark Green is to be used, the above will cost $51.00 Fifty One Dollars

All the above shades to be mounted on Hartshorn rollers and furnished with Silk chochet pulls.

337 The above shades to be made and hung by best workmanship manner.

Thanking you for an early reply as the above Job will take about 10 days to be made Satisfactory.

I remain

Very truly yours SAMMONS.

Commission's Exhibit No. 9

Telephone Main 5901

WASHINGTON, D. C., *Oct. 20 1911.*

Mr. John Henderson Dr. to The Shade Shop. Exclusive Manufacturers of Window Shades. 724 Eleventh Street N. W.:

To Shades as per est	$42.00

[Indorsed:] Paid The Shade Shop

Commission's Exhibit No. 10

Telephone, Main 1569

At the Sign of the Shade Shop. W. Stokes Sammons, Mgr.

Exclusive Manufacturers of Window Shades

819 Fifteenth Street Northwest

WASHINGTON, D. C., *August 8, 1913.*

Mr. JOHN HENDERSON,
City.

DEAR SIR:

We propose to furnish Twenty-six window shades to each of your two houses on Wyoming avenue between 18th and 19th streets, using Domestic Holland, mounted on Hartshorn rollers and finished with crochet pulls, for the sum of Sixteen dollars per house ($16.00).

To put lace and insertion on shades on door, two panel doors and two Parlor windows; lace only on Dining Room, Front of house second and third floors; for the sum of Nine dollars per house.

Thanking you for the above order, which will be made and hung on one day's notice, we are,

Most respectfully,

THE SHADE SHOP.

[Indorsed:] Accepted.

---

338 Date Apr. 14, 1921.
Witness Henderson.
Reporter Charvey.

Commission's Exhibit No. 11

[From page 175, Telephone Directory:]

Shade Shop 741 12th NW--Main-4763
Shade Shop 830 13th NW--Main-4874

Commission's Exhibit No. 12

[From P. 253, Telephone Directory:]

Main 4763 Shade Shop, Hooper & Klesner----------SE cor 12th & H NW
Main 4874 Shade Shop The, S S Sammons, window shds, 733 12th NW

Commission's Exhibit No. 13

[From Page 261, Telephone Directory:]

Main 4763 Shade Shop, Hooper & Klesner----------SE cor 12th & H NW
Main 4874 Shade Shop The, S S Sammons, window shds, 733 12th NW

Commission's Exhibit No. 14

Telephone, Main 1569

WASHINGTON, D. C., *October 20, 1913.*

Mr. John Henderson, #211 S Street, n.w. Dr. to The Shade Shop. W. Stokes Sammons, Mgr. Exclusive manufacturers of Window Shades, 819 Fifteenth Street Northwest:

Jan. 11. To one shade ..... $ .50

Commission's Exhibit No. 15

Phone Main 5901

WASHINGTON, D. C., *June 19, 1911.*

Mr. John Henderson, Dr. to The Shade Shop, exclusive manufacturers of Window Shades, 724 Eleventh Street N. W.:

#715 G Street, n.e.
To one shade ..... $ .70
1 front door shade 129—Fla. Ave.
2 small parlor shades 127 Fla. Ave.

[Indorsed:] 11/2–11 CK on % $25.

Commission's Exhibit No. 16

Telephone Main 1569

WASHINGTON, D. C., *October 20, 1913.*

Mr. John Henderson, Dr. to The Shade Shop. W. Stokes Sammons, Mgr. Exclusive manufacturers of Window Shades. 819 Fifteenth Street Northwest:

Sept. 21/12.	To shades as per estimate		$48.30
	Credits.		
	By checks on account		40.00
			$8.30

---

339 *Commission's Exhibit No. 17*

Telephone, Main 1569

WASHINGTON, D. C., *October 20, 1913*

Mr. John Henderson, Residence. Dr. to The Shade Shop. W. Stokes Sammons, Mgr. Exclusive manufacturers of Window Shades 819 Fifteenth Street Northwest:

May 25/12.	To shades as per estimate		$27.00
	By check		15.00
			$12.00

Commission's Exhibit No. 18,

Telephone, Main 1569

WASHINGTON, D. C., *March 19, 1924.*

Mr. Jno. Henderson, Dr. to The Shade Shop. W. Stokes Sammons, Mgr., exclusive manufacturers of Window Shades, 819 Fifteenth Street Northwest:

Mch. 23/12		$15.00	
May 25		27.00	
Sept. 21		48.30	
Jan. 11/13	#211 8 street	.50	
Sept. 27		50.00	
Feb. 14/14	#1812 3rd street, n. e	18.75	
			$159.55

Credits

Apr. 6/12	By check	$15.00	
July 20	By check	15.00	
Sept. 7	By check	10.00	
Dec. 23	By check	20.00	
Feb. 27/13	By check	10.00	
Date	By check	18.00	
Oct. 20	By check	25.00	
Dec. 6	By check	25.00	
Mch. 14/14	By check	18.75	
			$156.75
			$2.80

[Indorsed:] Paid The Shade Shop.

Commission's Exhibit No. 18

Telephone, Main 4763

At the Sign of "The Shade Shop"

W. Stokes Sammons, Prop. Exclusive Manufacturers of Window Shades, Twelfth and H Streets Northwest

WASHINGTON, D. C., *Nov. 20, 1914.*

Mr. J. HENDERSON,
City.

SIR:

I will furnish shades to 2810–12 13th Place as follows:

Imported Scotch Holland to entire 1st floor—except kitchen and pantry—same to have imported lace and insertion.

Entire 2nd floor, attic, kitchen and pantry to have domestic holland, mounted on Hartshorn rollers and finished with crochet pulls.

For the sum, one hundred ($100.00) dollars.

Respectfully,

THE SHADE SHOP.

340 *Commission's Exhibit No. 20*

Telephone Main 4763

WASHINGTON, D. C., *June 19, 1915.*

Mr. John Henderson, Dr. to "The Shade Shop" W. Stokes Sammons, Prop. exclusive manufacturers of Window Shades Twelfth and H Streets Northwest:

To 6 houses—Shades—at $32.00 per house	$222.00
To 6 lace and insertions at $1.25 apiece	7.50
Extra, 6 doors at $.50 apiece	3.00
	$232.50
By credit	3.00
	$229.50
[Indorsed:] Paid. The Shade Shop.	38.25

Commission's Exhibit No. 21

WASHINGTON, D. C., *12/18/15*

Mr. John Henderson To "The Shade Shop" Dr. W. Stokes Sammons, Prop. Exclusive manufacturers of Window Shades 733 Twelfth Street Northwest Telephone Main 4874

Upton St.	
To three houses, as per estimate $37.00	$111.00
" corner " 5 extra White Holland, Lace and Insertion	9.50
" " " 1 " " " " " " 50"	2.50
" " " 5 " " Domestic	4.00
	$127.00
	1.50
	125.50
To 3 houses lace and insertions $1.25	3.75
	$129.25
By credit (W. Stokes Sammons)	125.00

Commission's Exhibit No. 22

WASHINGTON, D. C., *4/26/16*

Mr. John Henderson. To "The Shade Shop" Dr. W. Stokes Sammons, Prop. Exclusive manufacturers of Window Shades. 733 Twelfth Street Northwest Telephone Main 4874:

Upton Street:	
To Nine houses as per est. $37.00	$333.00
" Three corner houses extra $16.00	48.00
" Nine extra doors lace & insertion $1.75	15.75
" 2938 Upton 20 38" cambric shades .80	16.00
" " " 10 44" " " $1.25	12.50
" " " 1 50" " "	1.50
	$426.75
By cash on account	$125.00
Balance	$301.75

[Indorsed:] 4/26/16. Paid in full by 60-day note. The Shade Shop.

341 *Commission's Exhibit No. 23*

WASHINGTON, D. C., *May 8th., 1916.*

Mr. J. Henderson. To "The Shade Shop" Dr. W. Stokes Sammons, Prop. Exclusive manufacturers of Window Shades 733 Twelfth Street Northwest. Telephone Main 4874:

5/6 2928 Upton Street:
Shades as per estimate $16.00

Date 4/15/21.

Commission's Exhibit No. 24

WASHINGTON, D. C., *Oct. 30, 1916*

Mr. John Henderson To "The Shade Shop" Dr. W. Stokes Sammons, Prop. Exclusive manufacturers of Window Shades 733 Twelfth Street Northwest Telephone Main 4874:

To 3 houses as per est	$128.00
" " " " "	128.00
" 9 Lace & Insertion Door @ 1.75	15.75
" 2928 Upton as per est	16.00
" 2938 " " " "	27.25
Papering & painting 1926 Vt. Ave	99.00
to " Floors	7.00
To papering 2920 Upton	13.50
" xtra " " "	5.25
" papering 2944 " est	13.50
" xtra Border " "	3.00
Painting Residence	90.00
	$546.25
Note	300.00
Bal	$246.25

Paid in full to date. The Shade Shop.

Commission Exhibit No. 25

WASHINGTON, D. C., *Nov. 25th, 1916.*

Mr. John Henderson To "The Shade Shop" Dr. W. Stokes Sammons, Prop. Exclusive manufacturers of Window Shades 733 Twelfth Street Northwest Telephone Main 4874:

Franklin St., North Side—

To 1 house	$11.30
To 3 Houses at $10.20 each	30.60
	$41.90

Date 4/15/21.

342 *Commission's Exhibit No. 26*

WASHINGTON, *5/31/17.*

Mr. John Henderson To "The Shade Shop" Dr. W. Stokes Sammons, Prop. Exclusive manufacturers of Window Shades 733 Twelfth Street Northwest Telephone Main 4874:

To 8 Houses Franklin St	$85.00
" 4 rollers, 82 Doz. Pulls	1.00
	$86.00

[Indorsed:] Paid The Shade Shop.

Commission's Exhibit No. 27

WASHINGTON, D. C., *July 15, 1919*

Mr. John Henderson To "The Shade Shop" Dr. W. Stokes Sammons, Prop. Exclusive manufacturers of Window Shades 733 Twelfth Street Northwest Telephone Main 4874

5/24 5 Shades West House	5.00

Paid Aug 5 1919 The Shade Shop. W. Stokes Sammons, Prop.

Commission's Exhibit No. 28

WASHINGTON, D. C., *July 15, 1919*

Mr. John Henderson To "The Shade Shop" Dr. W. Stokes Sammons, Prop. Exclusive manufacturers of Window Shades 733 Twelfth Street Northwest Telephone Main 4874:

4/3 4 Houses Shades	$32.00	$128.00

[Stamped:] Paid Aug. 5, 1919 The Shade Shop W. Stokes Sammons, Prop.

Commission's Exhibit No. 29

WASHINGTON, D. C., *6/20/20*

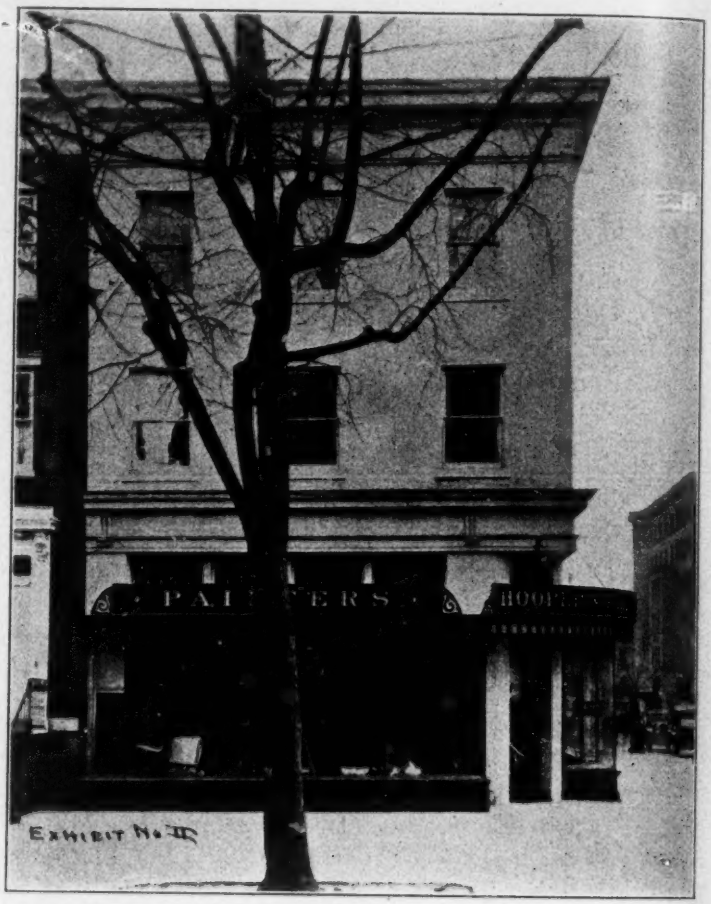
Mr. John Henderson To "The Shade Shop" Dr. W. Stokes Sammons, Prop. Exclusive manufacturers of Window Shades 733 Twelfth Street Northwest Telephone Main 4874:

3910-12-14 Jenifer Street Shades furnished in 3 houses as per estimate	$125.00

[Indorsed:] Paid in full 11/21-1920.

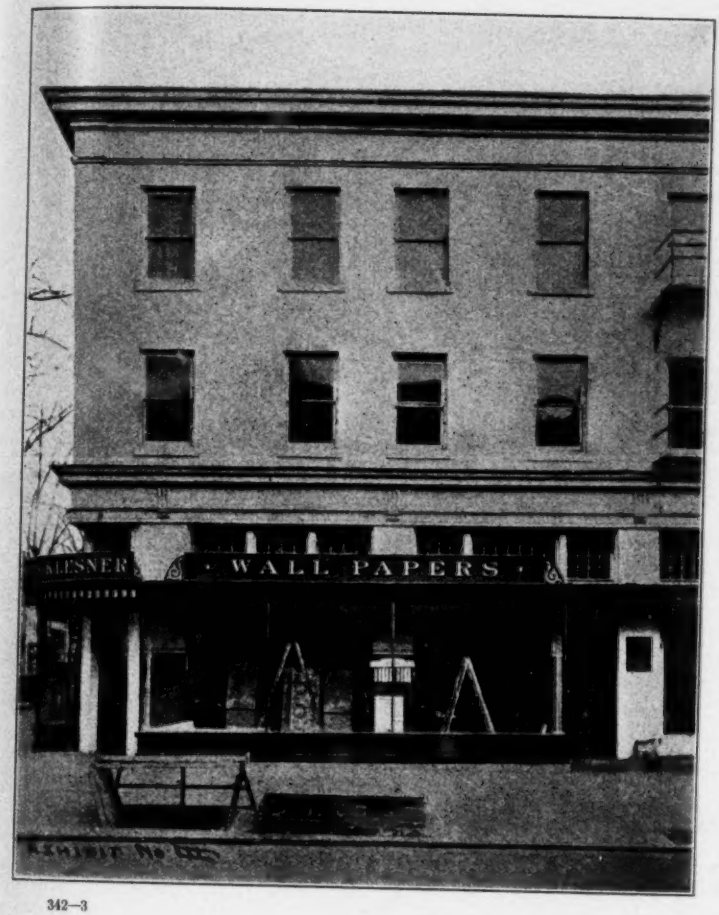
342—1

374—1



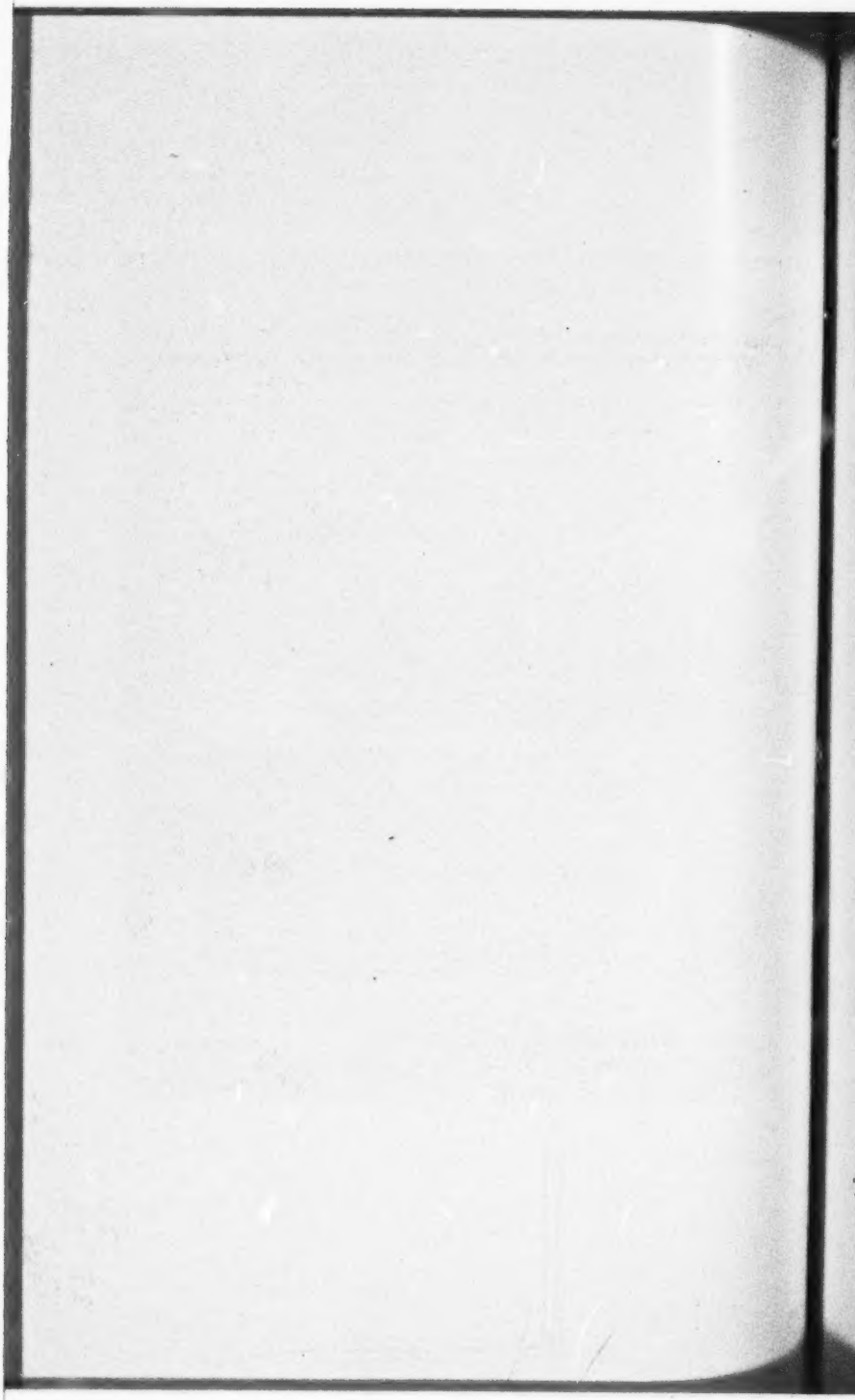
342—2

374—2



342—3

374—3



343 *Commission's Exhibits Nos. 33–41, inclusive*

[Post cards]

WASHINGTON, D. C., *Oct. 2, 5.30 PM 1913*

SHADE SHOP,
819 15th St NW City.

Please hurry shade in dining room 3rd floor front Hawthorne, 1527 Eye St.

WEAVER BROS., *735 15th St.*

WASHINGTON, D. C., *Sep 7, 2 PM 1915*

THE SHADE SHOP
Cor. 12th & H Streets.

Please repair, if possible, or furnish new shade in apt. 301, The Cecil, as soon as possible.

E. O. WAGENHORST,
Bond Bldg.

WASHINGTON, D. C., *Sep 15, 1.30 PM 1915*

THE SHADE SHOP
12th and H Streets N. W., City.

16 I street N. W., Put up shades to front windows.

STONE & FAIRFAX,
1342 New York Ave. N. W.

WASHINGTON, D. C., *Oct 12, 7.30 PM, 1915*

SHADE SHOP,
12th & H St NW., Local.

Let me have an estimate at 210 C st N. W. for new shades throughout and 1854 Park Road NW., new shades where necessary—let me have these before 12 noon Wednesday.

SHANNON & LUCHS
Renting Service.
By DOYLE.

WASHINGTON, *D. C., Oct 18, 6 PM, 1915*

THE SHADE SHOP
12th & H sts N W City.

1325 F st N W, 2nd floor. Estimate to put up new shades

STONE & FAIRFAX,
1342 New York Ave. N. W.

344 WASHINGTON, D. C., *Oct. 21, 7.30 PM, 1915*

SHADE SHOP
12th & H st. City.
52 Ashley Supply 14 shades.

SHANNON & LUCHS
Renting Service.
By HARRY B. PITTS.

WASHINGTON, D. C., *Feb 26, 6 PM, 1918*

THE SHADE SHOP
733 12th. N. W., city.
3 new shades apt. 22, Aurora 1840 You N. W.

MOORE & HILL, INC.
SKILOP.

WASHINGTON, D. C., *Aug 5, 11 AM, 1919*

THE SHADE SHOP
733 12th st N W City
#8. The Frederick. Renew shades where needed, about 6 shades.

STONE & FAIRFAX,
1342 New York Ave. N. W.

WASHINGTON, D. C., *May 13, 9.30 PM, 1918*

SHADE SHOP
733 12th st. N. W. City.
1226 14th st. N. W. 1st fl. front room. Go ahead as per est. of $15.00. Rush.
6 .5 Keefer st. N. W. install 6 shades at front of house.

SHANNON & LUCHS,
Renting Service.

Commission's Exhibit No. 42

The Evening Star, Friday, September 10, 1915. Washington, D. C.:

BUY WINDOW SHADES
AT FACTORY PRICES.
Put up by factory experts.
The Shade Shop, 12th & H sts. n. w. Phone M. 4763.

345 *Commission's Exhibit No. 43*

The Evening Star, Thursday, February 29, 1912. Washington, D. C.

Better Window Shades
For less money. Lace Shades a specialty.
We are headquarters for Shades.
The Shade Shop, 724 11th st. Phone M. 5901.

Commission's Exhibit No. 44

The Evening Star, January 30th, 1918. Washington, D. C.:
The Best Window Shades at Factory-to-Home Prices.
The Shade Shop, 733 12th St. Ph. M. 4874.

Commission's Exhibit No. 45

[Letterhead with cut of building]

Telephone Main 4763 Hooper & Klesner Interior Decorators Cor. Twelfth and H Sts. N. W. Wall Papering Painters Manufacturers of Window Shades Builders & Manufacturers Exchange Member of B. & M. E.

Commission's Exhibit No. 46

[Billhead with cut of building]

Telephone Main 4763 Terms Strictly Cash

WASHINGTON, D. C., *Jan. 23, 1920.*

Mr. B. C. Linthicum To Hooper & Klesner, Dr. Paper Hangers, Painters and Decorators Manufacturers of Window Shades Southeast Corner Twelfth and H Streets Northwest:

1 doz. pulls ..... 50¢

[Indorsed:] Paid

Commissioner's Exhibit No. 47

OFFICE OF L. S. FRISTOE
1413 G Street, Washington, D. C., Nov. 12, 1912.

SHADE SHOPE

You will please deliver to the Cordova 3 doz. curtain cords and return this order to undersigned with bill.

L. S. FRISTOE.

Bills must be sent in on the first of each month.

346 *Commission's Exhibit No. 47*

All transient advertisements cash Contract bills payable monthly

THE WASHINGTON HERALD CO.
Washington, D. C., Oct. 1, 1912

The Shade Shop, 724 11th St., To The Washington Herald Co., Dr.
1322 New York Avenue N. W. To advertising as follows:

Sept. 1	Window Shades 2 lines 30 times	2.40	
	Bill rendered	2.48	
			4.88
Oct. 1	By Cash T. A. H		2.00
	Balance		2.88

Federal Trade Commission vs. Shade Shop, Hooper & Klesner
Docket No 696 Exhibit No 47

Frank B. Noyes, President
Thomas C. Noyes, Treasurer

The Evening Star—The Sunday Star
THE EVENING STAR NEWSPAPER CO.,
Washington, D. C., Mar. 27, 1912.

In Account with The Shade Shop, 724 11 St. N W City
To Advertising as follows: Contract Bills Payable Monthly

Date 1912	Classification	Daily	Times	Debit
Feb 20	S N From 2/20 to 2/29 inc—D EX S	6	9	4.86
Mar 1	S N D EX S From 3/1 to 3/21 inc	6	18	9.72
				14.58
	Ad writing chg Feby 12			1.00
	" " " Mar 12			2.00
Apr 1/12	By Bill in bar Archibald			$17.58
				16.50
				$1.08

April 1/12 Paid Jay B. Smith, for Co.
[Indorsed:] OK Arch

Commission's Exhibit No. 48

Shade Shop. 724 11th St. N. W. 1 Window 1 Door. Every two weeks.

347 Each signature is to show that work has been satisfactory, and will be paid for as agreed.
1 A. Sammons. Nov 23 1910
2 A. Sammons Dec 7 1910
If we please you, tell others. If we don't, tell us.

Leon L. Cahoon Acme Window Cleaning Co. 921 G St. N. W. Phone, Main 7159 To Shade Shop 50¢ For Cleaning Windows Received Payment. L. L. Cahoon

---

Shade Shop. 724 11th St. N. W. 1 Window 1 Door. Every two weeks.

Each signature to show that work has been satisfactory, and will be paid for as agreed.
1 Shade Shop Mar 28 1912 2 The Shade Shop Apr 1 1912
If we please you, tell others. If we don't, tell us.

Leon L. Cahoon Acme Window Cleaning Co. 921 G St., N. W. Phone, Main 7159 To Shade Shop. $.50 for Cleaning Windows Received Payment, L. L. Cahoon

---

Shade Shop. 724 11 St. N. W. 1 Window 1 Door. Every two weeks.

Each signature to show that work has been satisfactory, and will be paid for as agreed.
1 The Shade Shop. Apr 11 1911
2 The Shade Shop Apr 25 1911
If we please you, tell others. If we don't, tell us.

Leon L. Cahoon Acme Window Cleaning Co. 921 G St. N. W. Phone, Main 7159 To Shade Shop. $.50 For Cleaning Windows. Received Payment. L. L. Cahoon

Commission's Exhibit No. 49

1219 Franklin St. N. E.,
South Brookland, D. C.
Jan. 1, 1913.

The Shade Shop,
819 15 St. N. W., Washington, D. C.

Gents:

I have accepted your estimate for the 27 window shades. My choice of imported Holland is No. 20, Sage Color—and please
348 be sure to have them generously long, & wide enough. I do not wish to hurry you on the work, still your earliest date to put them up would be agreeable to me, as you know I am almost in darkness. Price per your estimate #33.

Thanking you for your attention, I remain—

Mrs. E. V. Eldridge

Commission's Exhibit No. 50

Stewart Hartshorn Co.
E. Newark, N. J., July 26, 1915

Shade Shop,
12th & H Sts., N. W., Washington, D. C.

My Dear Mr. Sammons:

I am returning you bills and letter and thank you for your courtesy in this matter and very prompt attention. We now understand the matter thoroughly and we have, accordingly, arranged the books. Thanking you again, we are,

Yours truly,
Stewart Hartshorn Co.
S. Spiro.

Commission's Exhibit No. 51

Telephone 1305 Gramercy. Jay C. Wemple Company Manufacturers of Window Shades, Shadings and Spring Rollers 35 and 37 East 20th Street New York 8/6/15 Sold to Shade Shop. Washington, D. C.:

Pieces of cloth	Color	Width	Description	Yards	Price	Prices subject to change without notice	
	Wool	38	Cambric	22½	.40	9.00	
1	051	38		57½	.34	19.55	
						28.55	
						14.98	13.57
			Crippen 144 F 22237 50–5%				
			50–10%				12.86

If this bill differs in any respect from your understanding at the time of purchase, please notify us at once, as no allowance will be made at time of settlement.

[Stamped:] Paid Jay C. Wemple Co. Sep. 15, 1915.

349 *Commission's Exhibit No. 52*

The Columbia Mills Inc.

Please remit to New York Office Sept. 23, 1915 Sold to The Shade Shop, 12th & H Sts NW, Washington, D. C. Salesman, Dakin.

No claim will be considered unless made within thirty days from above date.

Quantity	Quantity in	Diameter	Length	Kind of bracket	Style of packing	Description of goods	Price	Price subject to change without notice	
		Inch	Inch						
4	Gross	15/16	39	OB	Crate	Quaker	9.00	36.00	
2	"	1	42	IB		"	11.75	23.50	
½	"	1⅛	48	OB		"	15.80	7.90	
¼	"	1¼	54	OB		"	25.10	6.28	
¼	"	1¼	64	OB		"	29.10	7.28	
									80.96
						1%			.81
									80.15

[Stamped:] The Columbia Mills Incorporated. Paid Oct. 16, 1915 W.

Commission's Exhibit No. 53

Telephone, 1305 Grammercy. Jay C. Wemple Company. Manufacturers of Window Shades, Shadings, and Spring Rollers. 35 and 37 East 20th Street, New York, 11/10/14. Sold to The Shade Shop, Washington, D. C.:

Pieces of cloth	Color	Width	Description	Yards	Price	Prices subject to change without notice	
1	155	38	Empire	58½			
1	330			59½	.28	33.04	
1		42		60	.36	21.60	
1		48		58	.44	25.52	
						80.16	
				50–5%		42.08	38.08
	011	38	Cambric	13	.40	5.20	
		45		11½	.52	5.89	
		48		2¼	.60	1.30	
						12.39	
				50%		6.19	6.20
			King. 238 F8395				44.28

If this bill differs in any respect from your understanding at the time of purchase, please notify us at once, as no allowance will be made at time of settlement.

[Stamped:] Paid Jan. 13, 1915. Jay C. Wemple Co.

350 *Commission's Exhibit No. 54*

C. P. Phone, St. Paul 3911. E. Arnold Nice Company incorporated. Manufacturers and importers. Window Shades, Scotch Hollands, Shade Rollers, Drapery Hardware and Sundries. 118 Hopkins Place.

BALTIMORE, *Nov. 22, 1915*

THE SHADE SHOP,
12th & H St., N. W., Washington, D. C.

24 prs. Ext. Brax	.04	.96
Parcel post		.08
		1.04

[Stamped:] Paid Jan. 10, 1916, E. Arnold Nice Co. A. W. Z.

Commission's Exhibit No. 55

Monthly statement. Washington, D. C. The Shade Shop. 12 & H st. The Washington Herald:

Nov. 30	To 1 month's service in The Washington Herald's Telephone Directory	1.00

[Indorsed:] Paid Dec. 18, R. Saund, Herald.

Commission's Exhibit No. 56

WASHINGTON, D. C.,——— *19—*

M ——— ———

To "The Shade Shop" Dr W. Stokes Sammons, Prop.

Exclusive manufacturers of Window Shades 733 Twelfth Street Northwest Telephone Main 4874

Commission's Exhibit No. 57

At the Sign of Shade Shade Shop. W. Stokes Sammons, Mgr.

Exclusive Manufacturers of Window Shades. H Street and 12th, NW.

WASHINGTON, D. C., *Oct. 19, 1914.*

Mr. JOSEPH KING,
Southern Bldg.

SIR:

In re "Apartment, 2nd & R St." I will furnish 45 Dark Green King's Holland, as per sample enclosed, for the sum of forty ($40.00) dollars.

351 If ecru King's Holland, as per sample enclosed, the above 45 shades will cost thirty-six ($36.00) dollars.

Respectfully,

THE SHADE SHOP.

Commission's Exhibit No. 58

This number, 2547, must appear on all communications, shipments, and bills.

Maryland State College of Agriculture. Firm, The Shade Shop. Address, Washington, D. C.

Please furnish us with the following articles, and ship and bill the same to the Department of General Service. Howard L. Crisp in charge.

Aug. 19, 1918.

35 window shades (1 to each window) made to sizes taken by your Mr. Horagan and mounted on Hartshorn rollers. Samples of colors & grades have been selected & will be forwarded to you under separate cover.

Approved, H. L. Crisp, dean.

College Park Maryland, *August 17, 1918.*

Requisition 2-18-19. Budget 32. Fund A.

A. F. Wood, *President.*

The College is located on the B. & O. R. R. and on the City & Suburban Electric Car Line, 8 miles from Washington, D. C. C. & P. 'Phone.

Commission's Exhibit No. 59

Statement

Baltimore, *March 30, 1916.*

The Shade Shop,

Washington, D. C., 733 12th St., N. W.

To E. Arnold Nice Company, Dr. Manufacturers, Importers, and Commissions. Window Shades, Scotch Hollands, Shade Rollers, Drapery Hardware, and Sundries. C. & P. Telephone, St. Paul 3911. 118 Hopkins Place.

1915			
Dec. 23			19.31
1916			
Jan. 1			1.50
	1		1.49
	11		13.30
	13		5.12
Feb. 21			14.50
	24		3.57
			58.79
Feb. 24	Credit		12.65
			46.14

352 *Commission's Exhibit No. 60*

THE COLUMBIA MILLS, INCORPORATED,
May 4th, 1916.

Please remit to New York office.
Sold to Shade Shop, 733 12th St., N. W., Washington, D. C. Salesman, Dakin.
Shipped via W. F. Express.
No claim will be considered unless made within 30 days from above date.

Yards	Width No.	Color	Description of goods	Price	Price subject to change without notice	
123½	45″	11	Kings Less 50%	.96	118.56 59.28	59.28

[Stamped:] The Columbia Mills, Incorporated. Paid Jun. 27, 1916. Per W.

THE COLUMBIA MILLS, INCORPORATED,
April 25th, 1916.

Please remit to New York office.
Sold to The Shade Shop, 733 12th St., N. W., Washington, D. C.
Salesman, Dakin.
Shipped via W. F. Express.
No claim will be considered unless made within 30 days from above date.

Pieces cloth	Yards	Width No.	Color	Description of goods	Price	Price subject to change without notice
1	200	36″	41	Crown	.07½	15.00

[Stamped:] The Columbia Mills, Incorporated. Paid Jun. 15, 1916. Per W.

Commission's Exhibit No. 61

Order No. 2845

WASHINGTON, D. C., *Apl. 8 1918*

SHADE SHOP

Please send us the articles enumerated below, and charge same to account of James B. Henderson, 1108 G Street N. W.

353 Acknowledge receipt of order by return mail, stating date of shipment.

Salesman F. H. M.

3 Shades 3.2×2.6
1 " 2.8×6.6 ---------- $1.45

*Opaq Duplex goods measurement allow 6" on length for old rollers.

To be used on Job No. 1782

Commission's Exhibit No. 62

Order No. 1929

WASHINGTON, D. C., *6-26-18.*

SHADE SHOP:

Please send us by the articles enumerated below, and charge same to account of R. W. Henderson, 1109 F Street N. W.

Acknowledge receipt of order by return mail, stating date of shipment.

Salesman J. C.

4 shades	45"×56"	Tip to tip and finished length
1 shade	39"×56"	
2 shades	30"×56"	
2 shades	22½"×46"	

Of white Holland. O. B. $16.00

To be used on Card No. 1208.

Commission's Exhibit No. 63

4205.

Phys. Ther.

WALTER REED GENERAL HOSPITAL,
TAKOMA PARK, D. C.,
Property Division 6/29/19.

No. 4205.

SHADE SHOP,
733 12th St., N. W., Washington, D. C.

SIR:

You are requested to furnish the Medical Department, U. S. Army, with the following articles:

20 shades 3 x 6½ ft ---------- $1.00 ------ $20.00

Reference: Oral:

Goods to be delivered to the Property Office, this hospital, all charges prepaid, accompanied by itemized bill.

Allot. #6-SGO-Phys. Ther.

Very respectfully,

F. ST. BOULANGER,
2nd Lt. San. Corps, U. S. A., Property Officer.

354 *Commission's Exhibit No. 64*

WAR DEPARTMENT, DEPOT QUARTERMASTER'S OFFICE,
Washington, October 1, 1918.

From: Depot Quartermaster, Washington, D. C.
To: Shade Shop, 733 12th St., N. W., Washington, D. C.
Subject: Request for invoices.

1. Reference to Order No. 9159, this office, dated Sept. 7, 1918, it is requested that invoice, in duplicate, be furnished this office for supplies or services called for on order cited with the following notation shown, and signed, on face thereon, by principal or member of firm:

" Certified just and true for which payment has not been received."

2. Please address reply attention to Depot Quartermaster, Finance & Accts. Div., 17th & F St. N. W., Wash., quoting order No. 9159.

By direction of Depot Quartermaster:

F. S. BLAIR,
2nd Lt. Q. M. Corps.

P/MHM

Cmmission's Exhibit No. 65

Order No. 691

A. C. Moses Construction Company
916 New York Avenue N. W. Telephone Main 4031

WASHINGTON, D. C., *Jan. 21, 1919.*

THE SHADE SHOP,
733 12th St., N. W.:

Please furnish us the following material:
Six (6) Shade cords (for green shades)
five (5) " " (" cream shades)
To be delivered 403 Rock Creek Church Road.

A. C. MOSES CONSTRUCTION CO.
By C. M.

Commission's Exhibit No. 66

H. L. Rust, Real Estate Broker, 1400 H Street Northwest, Washington, D. C.

To SHADE SHOP

Please give bearer the following articles and charge to H. L. Rust, 104 Iroquois. 3 Shades.

10/6 1919

H. L. RUST,
Per J. B.

355 *Commission's Exhibit No. 67*

Walter J. Procter Co. Manufacturers 210-12-14 H Street N. W.

WASHINGTON, D. C. *July 17/19*

THE SHADE SHOP
12th. St.

Please send us 16-shade rollers 1¼" & one ball of shade cord color 41 chg. to the acct. of

WALTER J. PROCTOR CO.
H. E. C.

Commission's Exhibit No. 68

Order No. A 7130. Req. No. 6440

THE AMERICAN NATIONAL RED CROSS
WASHINGTON, D. C., *October 8, 1919.*

PURCHASE ORDER

To SHADE SHOP,
733 12th St., N. W.

Please furnish the following articles subject to the conditions stated below:

Deliver to Storekeeper, National Headquarters American Red Cross, 17th and E Sts., NW. for Supt. of Bldgs.

12 shades made of cambric #51, with Hartshorn roller 3' x 6-------- $19.00

This confirms our telephone order to you Oct. 7, 1919.
Please expedite delivery.

Buyer TNP:ML

SUPERVISOR OF PURCHASES
By T. N. PHILLIPS

Commission's Exhibit No. 69

Weaver Bros. Real Estate, Loans and Insurance 735 Fifteenth Street N. W. Telephone Main 187 and 188

WASHINGTON, D. C., *10/19/19*

SHADE SHOP.

DEAR SIR: Belmar. Janitor's quarters. 3 cheap shades.

Commission's Exhibit No. 70

Weaver Bros. Real Estate, Loans and Insurance 735 Fifteenth Street N. W. Telephone Main 187 and 188

WASHINGTON, D. C., *11/18/19*

SHADE SHOP.

DEAR SIR: 26 Louisa. 1 Shade.

356 *Commission's Exhibit No. 71*

916 New York Ave., N. W. Phone Main 4031

A. C. MOSES CONSTRUCTION COMPANY
Washington, D. C., October 10, 1919.

SHADE SHOP,
733 12th St., N. W., City.

GENTLEMEN:

You may furnish two window shades for Mrs. Geiger, #2851 29th St., N. W., and send us bill. Mrs. Geiger will call to see you.

Yours truly,

A. C. MOSES CONSTRUCTION CO.
By B. HOLLAND.

BH/S.

Commission's Exhibit No. 72

Telephone Main 4763 Terms Strictly Cash

Hooper & Klesner, Paperhangers, Painters and Decorators
H Street and 12th N. W.

WASHINGTON, D. C., *July 1, 1914.*

Mr. W. STOKES SAMMONS,
Cor. 12th & H St. N. W.

Received fifty-six dollars and seventy-five ($56.75) cents for—Rent—telephone—stenographer service, towel service and window washing:

HOOPER & KLESNER
Per Miss WILLIAMSON.

Commission's Exhibit No. 73.

The Chesapeake and Potomac Telephone Company, 108 East Lexington Street

BALTIMORE, MD., *June 20th, 1921.*

FEDERAL TRADE COMMISSION,
Washington, D. C.
Attention G R H

DEAR SIR:

I am returning a letter received and intended for Mr. E. M. Johnson in connection with the case of Alfred Klesner, Docket 696.

This communication was opened in error by another Mr. Johnson and I am unable to deliver it to the party for whom it is intended because of his being out of town and his whereabouts are unknown.

We do not expect him to return until on or about July 15th. If there is anything further I can do at that time I will be pleased to be of service.

Yours very truly,

F. A. MCNALLY, *Sales Manager.*

FAM/MCL M C L.

357

389

357

Commission's Exhibit No. 74

[August 5, 1921]

[From page 446, Telephone Directory]

Main 4874 Sammons W Stokes 830 13th NW
Main 4763 Shade Shop 929 H NW

Shade Shop
HOOPER & KLESNER

Factory and Stores:
929 H Street N. W.
MAIN 4763

Main 4874 Shade Shop The 830 13th NW

"THE SHADE SHOP"
W. STOKES SAMMONS, Prop.
Exclusive Manufacturers of
WINDOW SHADES
830 13th ST. N.W. MAIN 4874

Respondent's Exhibit No. 2

[Billhead with cut of building]

Telephone Main 4763 Terms Strictly Cash

WASHINGTON, D. C., *Dec. 7th, 1916.*

Mr. ——— To Hooper & Klesner, Dr. Paper Hangers, Painters and Decorators Manufacturers of Window Shades Southeast Corner Twelfth and H Streets Northwest.

Respondent's Exhibit No. 3

WASHINGTON, D. C., *Aug. 28th, 1914.* No. 1486.

The Commercial National Bank

Pay to the order of Luther L. Derrick ---------- $35.00
Thirty-five and 00-100 ---------- Dollars

JNO. M. HENDERSON.

John M. Henderson, 1418 F Street, N. W. Real Estate Investments.

358 *Respondent's Exhibit No. 4*

Telephone, Main 1569

WASHINGTON, D. C., *May 12, 1914.*

Mr. John Henderson, Second Street, Dr. to The Shade Shop W. Stokes Sammons, Mgr. Exclusive manufacturers of Window Shades 819 Fifteenth Street Northwest:

To ten houses at $9.50		$95.00
May 2, 1914. By check		25.00
		$70.00
Cash May 18, 1914		35.00
Balance		$35.00

Respondent's Exhibit No. 5

WASHINGTON, D. C., *Aug. 26, 1914.*

Mr. John M. Henderson, Trading as The Shade Shop
To Luther L. Derrick, Dr.
Paper Hangings, Window Shades and Painting
Telephone Main 1569 Opposite Arlington Hotel
Luther L. Derrick Co.
Wall Paper, Painting and Window Shades, 819 15th St. N. W.

To shading 10 Houses on Second Street at $9.50 each		$95.00
May 2nd By Cash		25.00
May 18th By Cash		35.00
Balance		$35.00

[Indorsed:] O. K. The Shade Shop, per W. Stokes Sammons, Pres.

Respondent's Exhibit No. 6

THIS LEASE, made this 14th day of May, A. D., 1914, by and between Harry S. Hooper and Alfred Klesner, trading as Hooper and Klesner, parties of the first part, and W. Stokes Sammons, trading as "The Shade Shop," party of the second part, all of the city of Washington, District of Columbia,

WITNESSETH:

That the said parties of the first part have leased and do hereby lease unto the said party of the second part all of one-half of the store room, and all of one-half of the cellar (except such portion of said cellar reserved in hereinafter mentioned lease), in the premises known as and numbered 1116 H Street, Northwest, and 741 Twelfth Street, Northwest, in said city, for the term of two (2) years and four (4) months, beginning on the first day of June, 1914 and ending on the 30th day of September, A. D., 1916, at and for the term rent

of One thousand one hundred and sixty-six 66/100 $1166.66)
339 dollars, payable to the parties of the first part in equal monthly instalments of Forty-one 66/100 ($41.66) dollars, in advance, on the first day of every month; that is to say, Forty-one 66/100 ($41.66) dollars on the first day of June, A. D., 1914, and a like amount on the first day of each ensuing month thereafter, all in accordance with and in conformity to a certain lease bearing date on the 11th day of May, A. D., 1914, from Ellwood O. Wagenhorst as party of the first part, and the parties of the first part of this instrument, with all the right, interest and privileges accruing under this lease to the herein party of the second part in the said one-half of store and cellar as is acquired by the herein parties of the first part under the aforementioned lease, together with the right and privilege of putting display signs in all windows and in the main show room.

And the said party of the second part has agreed and does hereby agree to take and hold the said store and cellar premises for the term aforesaid and to pay the said rent as aforesaid; that he will make his own deposit and pay his own electric light bills when and as the same become due; that he will not sublet or assign the said premises or carry on any business therein except that of the manufacture and sale of window, door and other shades, without the written consent of the lessors, or use the same for any disorderly or unlawful purpose; that so long as the parties of the first part employ a competent and satisfactory clerk or office assistant who shall perform such services for the party of second part as answering and calling on the telephone, taking orders, interviewing customers, writing letters, making up bills and estimates, and such other reasonable office work as he may require, he shall pay the sum of Nine ($9) dollars per month towards the salary or wages of said clerk or office assistant; that so long as said parties of the first part contract for and maintain satisfactory telephone service on the above premises at the rate of Nine ($9) dollars per month, which shall be equally accessible to the party of the second part and with the same rights and privileges in the use of said service, he shall pay the sum of Four 50/100 ($4.50) dollars per month for such telephone service.

And should it be necessary at this or any future time to obtain the written consent of the lessor in the beforementioned lease in order to secure to the herein party of the second part his rights under this lease, then the herein parties of the first part hereby agree to obtain such written consent and their failure so to do within a reasonable time will operate to render this lease null and void at the option of the party of the second part.

Provided always, that if the said lessee shall fail to pay the said monthly instalments of rent, or any of them, in advance, as aforesaid although there shall have been no legal or formal demand for same, or shall neglect to pay the electric light bills when and as the same shall fall due and payable, as hereinbefore mentioned, or

shall sublet or assign the said premises or carry on any business therein except that of the manufacture and sale of window, door and other shades, as aforesaid, without the written consent aforesaid, or shall use the same for any disorderly or unlawful purpose, or shall break any of said covenants and agreements herein contained, then, and in either of said events, this lease, and all things herein contained, shall at the option of the lessors cease and determine, and shall operate as a notice to quit, the thirty days notice to
360 quit being hereby expressly waived. And the said lessors, their heirs and assigns, may proceed to recover possession of said premises under and by virtue of the provisions of the Code of Laws for the District of Columbia to regulate proceedings in cases between landlord and tenant.

And it is further provided, that, if under the provisions of this lease, a seven days summons shall be served, and a compromise or settlement be made thereupon, it shall not constitute a waiver of any covenant contained herein; and the said lessee hereby agrees to deliver the premises in the same order in which they were received, usual wear and tear and damage by fire and storm excepted; and it is further agreed that no waiver of any breach of any covenant herein shall be construed to be a waiver of the covenant itself or of any subsequent breach thereof or of this agreement.

It is further agreed that unless the building of which the said store premises are a part shall have been sold at or before the expiration hereof, the said lessee shall have the right to renew said lease for a term of one year at an increased rental; that is to say, for a term of one year at and for the rental of Six hundred dollars ($600), payable in monthly instalments of Fifty dollars ($50) in advance, on the first day of each month, and subject to the remaining covenants of this lease. In case, during the term of said renewal period, the said building shall be sold, the said renewal lease shall terminate on three (3) months notice to the lessee.

Witness our hands and seals this 14th day of May, A. D., 1914.

HARRY S. HOOPER [SEAL]
ALFRED KLESNER [SEAL]
Trading as Hooper & Klesner.
W. STOKES SAMMONS [SEAL]
Trading as The Shade Shop.

Witness:
KATHERINE B. WILLIAMSON
2126 H St. N. W.
RICHARD J. QUIGLEY

[Indorsed:] Lease, Hooper and Klesner to W. Stokes Sammons. Premises: Store and cellar, 1116 H Street, N. W. & 741 12th Street, N. W., Washington, D. C. Richard J. Quigley, Attorney-at-Law, 101–3 Columbian Bldg.

Respondent's Exhibit No. 7

SUPREME COURT OF THE DISTRICT OF COLUMBIA

WILLIAM STOKES SAMMONS, PLAINTIFF
vs.
HARRY S. HOOPER, ET AL., DEFENDANTS
No. 33946. Equity.

I, Morgan H. Beach, Clerk of the Supreme Court of the District of Columbia, do hereby certify the annexed to be true and correct copies of Answer of Defendants, &c., as (they) appear of record in the Clerk's office of said Court in above-entitled cause.

361 In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, this 14th day of April, A. D. 1921.

[SEAL.] MORGAN H. BEACH, *Clerk.*
By W. E. WILLIAMS, *Assistant Clerk.*

Filed December 10, 1915, J. R. Young, Clerk.

In the Supreme Court of the District of Columbia Holding an Equity Court

WILLIAM STOKES SAMMONS, PLAINTIFF,
vs.
HARRY S. HOOPER AND ALFRED KLESNER, Co-partners, Trading as the "Shade Shop," defendants
Equity No. 33946

Answer of defendants to rule to show cause issued in the above cause and to the bill of complaint

First. The defendants neither admit nor deny the allegations in the first paragraph of the bill but, if material, call for strict proof thereof.

Second. Defendants admit that the plaintiff is engaged in the business of manufacturing and sale of window shades, but neither admit nor deny that he has been doing so for the past eleven years, and upon information and belief deny that he was doing business under the name and style of "The Shade Shop," but on the contrary resumed said style and name after leaving the employ of one Luther L. Derrick, as will be shown hereinafter.

Third. These defendants admit that they are copartners and are citizens of the United States and residents of the District of Columbia, doing business at 1116 H Street, Northwest, and 741 12th Street, Northwest, both numbers being applicable to the one corner store, but emphatically deny that they are now or ever did trade as the "Shade Shop," and say that the style and name under which

they trade and do business under now is and always has been "Hooper and Klesner," as will appear more fully hereinafter.

Fourth. Answering the fourth paragraph, defendants reiterate their denial that they are trading as "Shade Shop." They admit that they are engaged in the painting, decorating, paper-hanging and shade business and have been engaged in said business since the Spring of 1909, and prior thereto defendant Hooper has been in said business for a number of years. Defendants specifically deny that they commenced the manufacture and sale of window shades on December 1, 1915, but on the contrary, the shade business has from the inception of the partnership, been a component part and parcel of the general painting and paper-hanging business as it is generally a part of practically every paper-hanger's business in the District of Columbia.

362 Fifth. Defendants neither admit nor deny the allegations in the fifth paragraph of said Bill, but if found material to the issues in this cause, call for strict proof thereof.

Sixth. Answering the sixth paragraph of said Bill, defendants say that for a more complete and intelligent understanding of the issues raised in this cause it is necessary to go back to the relations established between the parties in this cause under an agreement of lease dated May 14, 1914. Prior to that time defendants have been following up their paper-hanging, painting and shade business at 721 11th Street, N.W., and the plaintiff, as defendants believe and are informed, was employed by Luther L. Derrick, who is in the shade business at 819 15th Street, N.W., as will be seen by affidavit of said Derrick, attached hereto marked exhibit "B," and thereafter at suggestion of plaintiff, the parties to this cause have agreed to combine for the purpose of renting larger and more commodious quarters in a better business location for their mutual gain and advantage. To that end, the parties have also reached an amicable arrangement whereby defendants were to turn over all their shade business to be manufactured by plaintiff. By manufacturing shades is meant to cut the cloth and sticks to the different sizes desired and attach them. Accordingly, defendants rented the premises at the corner of 12th and H Streets, Northwest, having show-windows facing H Street and 12th Street, and designated as 1116 H Street, N.W. and 741 12th Street, N.W., and further entered into a written agreement of lease with the plaintiff, subletting to him part of the entire premises for the term of two years and four months at $1166.66, payable in monthly instalments of $41.66, with renewal privilege of an additional year at the expiration of said term at a higher rental. Said agreement of lease also provided for the employment in common of a clerk and the installation of a telephone, to which the plaintiff agreed to contribute the sum of $14.00 a month. As stated hereinabove, defendants in order to facilitate their own business and help along the plaintiff in his business, have turned over to him to put together or what plaintiff calls manu-

facture all shades ordered of them, paying plaintiff a certain agreed and stipulated sum for said work and allowing to themselves a reasonable profit. The plaintiff occupied the premises described hereinabove and abided by his lease up until the end of November, when without cause or notice of any kind, he broke said lease and removed from said premises to 733 12th Street, N.W., a few doors away, setting up therein a rival paper-hanging and shade business. In view of this, there was nothing for defendants to do but to continue the shade business theretofore conducted by them, and retrench the loss occasioned by plaintiff by reason of the unwarranted breach of his agreement with defendants and shifting the burden of the whole expense upon defendants. Defendants further say that they are under agreement of lease with the owner of the premises which will not expire until the end of the term of plaintiff's lease with them. At present there are the following signs upon the premises: in front of and above the entrance door there was and is a large conspicuous sign of "Hooper and Klesner," the firm name and style of the defendants and on the left hand the word "Painters" and on the right of it "Wall Papers"; in each of the windows are displayed wall-papers of different designs, and shades. One of the
363 show-windows is divided into three panels and the other into two, on each of the end panels on the 12th Street side is painted in large letters "Window Shades," and on the center panel is inscribed the words "Shade Shop" the several words indicating and describing the character of goods offered to the public in said store and on the H Street window, one panel has "Window Shades," and the other "Shade Shop," conveying to the public that it is a place where shades are made, and have the same meaning as the general phrases of "tailor shop," "millinery Shop," "meat market" of "blacksmith shop." At the time of the establishment of the lease relationship between the parties the words "The Shade Shop" were placed on said windows, where now is "Shade Shop," for the common benefit and advantage of both parties, inasmuch as the defendants held themselves out to the public as dealers in shades and invariably took orders as part of their own trade and they now urge that if these words have acquired what is known in law as a secondary meaning, it was as much for their benefit and to their interest as for the plaintiff, and the plaintiff has no Superior or proprietary rights in said name as against defendants, especially so when plaintiff's name no where appeared on the said premises. As admitted in the Bill the word "The" has been eliminated from the sign and only the words "Shade Shop" are inscribed on said windows as a term used by all makers of shades to indicate to the public that it is a place where shades are not only sold but also manufactured in the sense that the plaintiff manufactures them, thus conveying to the public that they can get shades at wholesale prices, and defendants say that this has gotten to be a trade expression for shade dealers and there is no word or words that can appropriately be employed to con-

vey the same thing. Defendants are advised and therefore aver, that they have as much of a legal right to engage in and carry on the business of sale and manufacture of shades as the plaintiff and have a right to bid for the patronage of the public generally, and deny that the words "Shade Shop" can become a trade name. They respectfully refer to at least one other dealer in this city, to wit, Luther L. Derrick, who is doing business under the style of "Derrick's Shade Shop" at 819 15th Street, N.W.

Further answering said paragraph, the defendants say that it is wholly false and untrue that they are now trading under or in any way using the style of "The Shade Shop" or "Shade Shop" and append hereto, marked Exhibit "A" and prayed to be read in connection herewith, copies of the business cards and stationery used by them in their business, and they specifically and generally deny that they have arranged and schemed to transact their business in such a way as to unfairly compete with the plaintiff or that they have had or made it known directly or indirectly either to the customers of the plaintiff or to the public generally that they are running or conducting "The Shade Shop" or "Shade Shop", or that they have employed any unlawful or unfair means to deceive or mislead any of plaintiff's customers or the public generally that they are successors to the business of the plaintiff, or done anything to receive or accept any order or business intended for plaintiff, under the guise, direct or indirect, that the business is the same as that of the plaintiff's. On the contrary, although not required either legally or morally so to do, in every instance where anyone called for shades each
364 and both of the defendants have particularly directed the attention of such caller that it is not the place theretofore conducted by Mr. Sammons and that Mr. Sammons has removed from the premises and if they wanted to give him the business they could find him elsewhere.

Seventh. By way of answer to the seventh paragraph of the plaintiff's Bill, defendants respectfully refer to what was said in the sixth paragraph, and further answering same, they deny that the words "Shade Shop" convey any different meaning than that the premises on which it is inscribed is a place where shades are made and sold, and they say it is wholly false and untrue that since removal of the plaintiff they have done anything by way of advertising either extensively or otherwise, or given any general notice or special notice to anybody as to their shade business, or that they are doing business in the firm name and style of "Shade Shop", either with the intention of injuring the plaintiff or to confuse or mislead anybody, or without such intention. These defendants denounce as especially false and malicious, allegations made by the plaintiff that telephone messages, mail, telegrams, express and freight intended for or addressed to me plaintiff will be or is delivered to and accepted by the defendants, and say that such acts on their part would be criminal and especially in violation of the postal regulations and such allega-

tions are only made for the purpose of prejudicing defendants before the court. As a matter of fact, ever since the removal of the plaintiff they have refused and declined any and all mail, express, or freight addressed to or intended for "The Shade Shop", and advised persons who sought to deliver such packages and mail, that Mr. Sammons, for whom the packages or mail was intended, was not there any more.

Eighth. Answering the eighth paragraph, these defendants say that it is wholly false and untrue that they are advising or instructing all the patrons and customers of plaintiff and the public generally that they are successors to or conducting the shade business theretofore conducted by the plaintiff, intending thereby to destroy his business, but on the contrary, they have taken no steps or done anything to advertise their shade business or solicit for any trade other than in the usual routine of business, and in each instance they made it clearly known to the customer that they are now in the shade business, selling and making shades in their own right entirely independent of plaintiff.

Ninth. Answering the ninth paragraph, as well as the many false, untrue and malicious charges of the plaintiff, these defendants say that this proceeding was instituted with the malicious and base intent of harrassing, annoying and oppressing the defendants and putting them to great expense, and directs the court's attention to the fact that in furtherance of said object plaintiff has caused the arrest of one of the defendants in Police Court, is endeavoring to ruinously underbid defendants with their old customers, and since plaintiff's removal up to the time of the filing of the Bill in court, neither the plaintiff nor his attorneys have in any wise intimated to the defendants or either of them that the retention of the words "Shade Shop" on the windows of defendants' place of business was either injurious to his business or in any way objectionable to him, nor have the defendants been requested either before or after painting these words, to discontinue their use, and
365 these defendants further point to the haste with which this suit was filed without any attempt at amicable adjustment, and to the many extravagant claims made therein of great loss suffered by the plaintiff when as a matter of fact only a few days elapsed between the time of putting the words "Shade Shop" on the windows to the time of filing this suit, as a further and conclusive indication of plaintiff's vindictive and malicious spirit in instituting this cause.

Wherefore having fully answered, defendants pray that the bill be dismissed with costs against plaintiff justly incurred in their behalf.

HARRY S. HOOPER
ALFRED KLESNER

DISTRICT OF COLUMBIA, to wit:

Alfred Klesner, being first duly sworn upon oath according to law, deposes and says: I have read and am familiar with the contents of the foregoing Answer, by me subscribed; that all matters stated therein of my personal knowledge are true and those stated upon information and belief, I believe to be true.

ALFRED KLESNER

Subscribed and sworn to before me this tenth day of December, A. D. 1915.

[SEAL] DUDLEY T. HASSAN,
Notary Public, D. C.

TEPPER & GUSACK,
Attorneys for Defendants.

Supporting affidavit

Filed December 10, 1915, J. R. Young, Clerk

In The Supreme Court of the District of Columbia Holding An Equity Court

WILLIAM STOKES SAMMONS, PLAINTIFF vs. HARRY S. HOOPER and ALFRED KLESNER, Co-partners, Trading as the "Shade Shop," defendants	Equity No. 33946

DISTRICT OF COLUMBIA, to wit:

Luther L. Derrick being first duly sworn upon oath, according to law, deposes and says: that for many years prior to May 1, 1911 affiant was conducting the paper-hanging, painting and window shade business in the City of Washington, District of Columbia, in which business affiant is also now engaged. That on or about May 1, 1911 affiant made arrangements with William Stokes Sammons whereby affiant employed the said Sammons to have charge of the window shade business conducted by affiant under the
366 name of "The Shade Shop"; that affiant employed the said Sammons as aforesaid on salary weekly and a commission of ten per cent, of all net receipts derived from the sale of window shades. Said arrangement was in force until about December 1, 1912 when affiant moved to his new place of business at premises 819 15th Street, Northwest, at which time affiant increased the salary of said Sammons to twenty-five dollars a week and ten per cent, commission on all net receipts which arrangements continued up to about the 15th day of May, 1914, when Mr. Sammons left the employ of affiant. Affiant further states that during the period of over three years, from May 1, 1911 to about May 15, 1914, he was the sole owner

of and had absolute control of the window shade business conducted as "The Shade Shop" and during such time all bills incurred in the manufacture of shades and all moneys received in the sale of shades manufactured by "The Shade Shop" were paid and received by affiant.

Further affiant sayeth not.

LUTHER L. DERRICK

Subscribed and sworn to before me this 10th day of December, A. D. 1915.

[SEAL]

WM. L. F. KING,
Notary Public, D. C.

Order dismissing rule

Filed December 23, 1915, J. R. Young, Clerk

In The Supreme Court of the District of Columbia Holding An Equity Court

WILLIAM STOKES SAMMONS, PLAINTIFF
vs.
HARRY S. HOOPER ET AL., DEFENDANT
} No. 33946. In Equity

Upon consideration of the Bill of Complaint, the exhibits thereto, and the rule to show cause issued thereon, and the answer and exhibits to said rule, as well as the arguments of counsel thereon, it is by the court this 23rd day of December, A. D. 1915 ordered, that said rule issued herein against the defendants be and hereby is dismissed.

THOS. H. ANDERSON,
Justice.

Respondent's Exhibit No. 9

[E. Arnold Nice Company] [Date] [Stamp]

Hooper & Klesner

12th & H St., N. W.

Washington, D. C.

367

Respondent's Exhibit No. 10

[Lapsley & Bro. Company] [Date] [Stamp]

Hooper & Klesner
12th & H Sts. N. W.
Washington, D. C.

Respondent's Exhibit No. 11

[Letterhead with cut of building]

Telephone Main 4763 Hooper & Klesner Interior Decorators Wall Papering Painting Manufacturers of Window Shades 929 H Street Northwest Washington, D. C., ———, 192 . .

Respondent's Exhibit No. 12

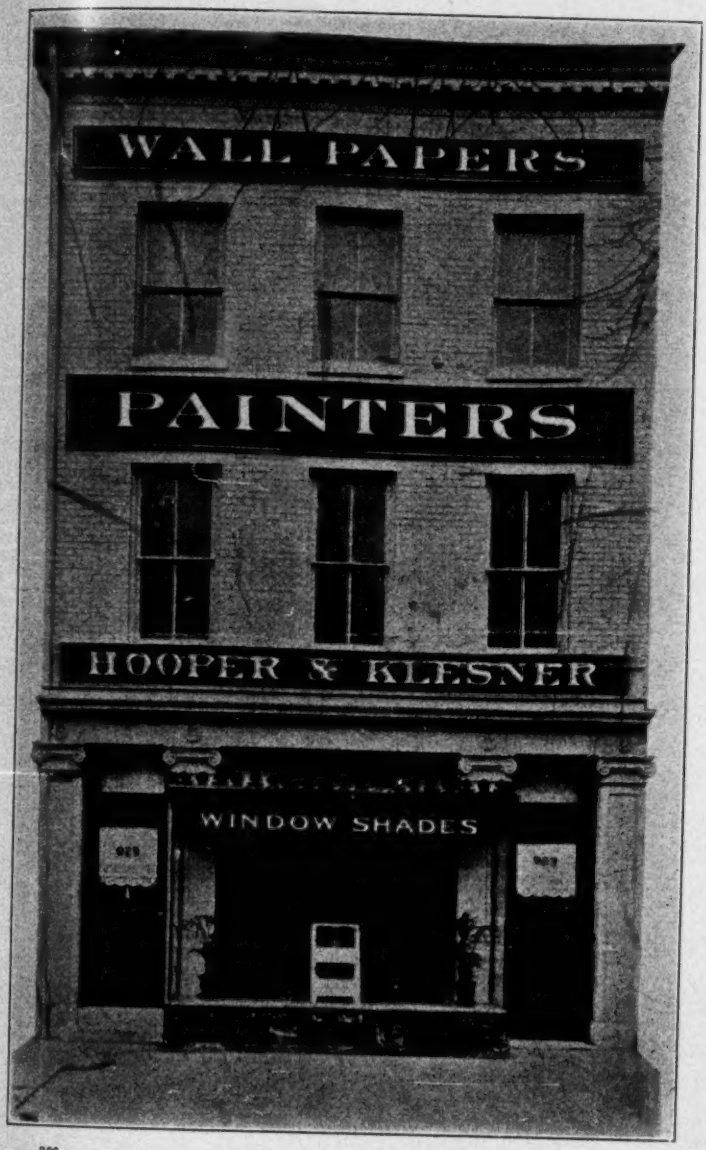
Equity Docket #73

No. 33946 Supreme Court of the District of Columbia.

Parties	Action	Complainant's Solicitor	Costs
William Stokes Sammons Trading as "The Shade Shop" v. 1 Harry S. Hooper 2 Alfred Klesner Co-partners Trading as "Shade Shop"	For Injunction	Toomey and Toomey. Defendant's Solicitor, Tepper & Gusack	Clerk, Marshal, Examiner, Depositions (), Auditor, Printer, Witnesses, Solicitor, Court of Appeals.

Date	Proceedings	Deposits	Clerk's fees
1915.	Deposit towards costs by plff	15 00	
" Dec 6	Bill. Appearance, Order to file & Exhibits (3 Photos) filed		
" " "	Spa to Answer & Copies (2) issued		
" " "	Rule returnable Dec 10'' M 99 P 138 (2 copies) "		
" " 9	Appearance of Tepper & Gusack for defts "		
" " 10	Answer of defts to Bill & Rule, Exhibit & Affidavit "		
" " "	Rule returned served defts "		
" " "	Spa to Answer returned served defts "		
" " 23	Order dismissing Rule M 99 P 172 "		
1920 May 24	Cause dismissed by Attys order "		

A true copy.
Test:
MORGAN H. BEACH, *Clerk.*
By F. E. CUNNINGHAM, *Asst. Clerk.*


WALL PAPERS
PAINTERS
HOOPER & KLESNER
WINDOW SHADES

368 *Respondent's Exhibit No. 13*

[Post card]

WASHINGTON, D. C., *Mar. 11, 2.30 p. m., 1921.*

Hooper & Klesner,
#929 H st. N. W., Local
Attention Mr. Marceron.
Please call at my office between 11.30 & 12.30 as I wish you to give me a figure on some houses.
Yours truly

HARRY K. BOSS,
1406 H st. N. W.

Respondent's Exhibit No. 14

[Chas. W. Breneman & Co.]

CINCINNATI, OHIO, *12/18/19.*

HOOPER-KLESSNER,
Washington, D. C.
GENTLEMEN:
We enclose current price list #199–I.
Our records show we forwarded you a sales-note sometime ago, suggesting your signature to it. Inasmuch as you did not see your way clear to do so at that time, we take the liberty of enclosing #15414 for your consideration, and trust you will affix your signature and return it to us *now*.
Prices on all shade materials are very firm and we are confident you will profit by covering for your Spring requirements.
Very truly yours,
MEM: GW.

CHAS. W. BRENEMAN & Co.
B. F. SEXTON, *Sales Mgr.*

Respondent's Exhibit No. 15

Edson W. Briggs Real Estate Munsey Building

WASHINGTON, *September 1, 1920.*

HOOPER & KLESNER,
Washington, D. C.
GENTLEMEN: Kindly give me estimates for furnishing shades at all the windows in Apartment 41, Alamo, 1223 12th St. N. W. to be of dark green opaque and mounted on Hartshorn rollers, same as furnished me in Apartment 1741 S St. N. W.
Very truly yours,
EWB/AA

E. W. BRIGGS.

369 *Respondent's Exhibit No. 16*

[T. M. James & Co.]

NEW YORK, *Nov. 13, 1919.*

Messrs. HOOPER & KLESNER,
Successor to A. Klesner, 12th & H Sts., NW.,
Washington, D. C.

GENTLEMEN: We acknowledge, with thanks, your order for 12 yds. 72" and 6 yds. 42" Yale Duplex to sample, and beg to advise that owing to a new ruling Opaque manufacturers now charge double list for colors not shown in their regular sample book of stock colors. Is this satisfactory—if not, could you substitute anything shown in sample book which we enclose herewith?

Awaiting your further instructions, we are,
Yours very truly,
ILL: W
T. M. JAMES & COMPANY.

Respondent's Exhibit No. 17

National Park Seminary, Forest Glen, Maryland, Suburb of Washington, D. C. James E. Ament, Ph. D., LL. D., President

Purchasing Department
Wm. F. Smith, Manager

JULY 21st, 1919.

HOPPER & KLESLER CO.,
S. E. Cor. 12th & 8th Sts.,
Washington, D. C.

GENTLEMEN: Will you be kind enough to quote us on 100 yards of Opaque Green shade cloth, and oblige,
Yours truly,
W. F. SMITH.

Respondent's Exhibit No. 18

[Southern Railway System]

WASHINGTON, D. C., *April 11, 1921.*

W. J. Bolin,
Supt. G. O. Bldg.

Order No. 1625

Mr. HOOPER & KLESNER:

DEAR SIR: Please furnish Southern Railway General Office Building with the following: 4 window shades complete, to be selected by Smoot Harper.

370 Make bill in triplicate and refer on same to order number as shown above, and mail direct to undersigned.

Yours truly,

W. J. BOLIN,
Supt. General Office Building.

Approved:
J. H. WINGFIELD,
Manager, Dining Cars.

Respondent's Exhibit No. 19

[Fruit Growers Express Company]

Date, Feb. 23, 1921 Order No. 143
Care of D. R. Elmore,
At 801 Munsey Bldg., Washington, D. C.
Ordered from Hooper & Klesner, 929 H St., N. W., Wash., D. C.
1, only, Office Window Shade—green—36 in. wide, 7 ft. long
Confirming order $1.75

D. R. ELMORE,
Ass't to General Manager.

Respondent's Exhibit No. 20

Purchase Order

[Treasury Department. Public Health Service]

Order No. 8147–C Requisition No. 9082 Contract No. 6216

MAR. 12, 1921.

To HOOPER & KLESNER,
929 H Street, N. W.,
Washington, D. C.

Please furnish the articles or services named below promptly.

Furnishing and installing at the U. S. Public Health Service Hospital #32, 2650 Wisconsin Avenue, Washington, D. C., the following:

Shading, Duplex, with rollers and hangers, for odd size windows, 62 sq. yds lot $73.00.

This order in accordance with your proposal dated Feb. 11, 1921, and approved Feb. 26, 1921.

Total, $73.00.

Respectfully,

CARROLL FOX,
Surgeon, Medical Purveyor.

371 *Respondent's Exhibit No. 21*

[Stewart Hartshorn Co.]

NEW YORK, N. Y., *October 14, 1919.*

HOOPER & KLESNER,
Cor. 12th & H Sts.,
Washington, D. C.

GENTLEMEN: We are changing the date on the order which you gave Mr. Crippen, and have instructed the factory to rush shipment all possible.

Yours very truly,

STEWART HARTSHORN CO.
S/R. A. S.

Before Federal Trade Commission

Docket No. 696

[Title omitted.]

Notice of motion to reopen hearing

Please take notice that I have to-day filed with the Federal Trade Commission a motion to reopen this proceeding for the purpose of introducing new evidence, together with the supporting affidavit of Gaylord R. Hawkins, copies of which motion and affidavits are herewith served upon you, and you shall have the right within ten (10) days of receipt of this notice to file with said commission any and all objections and affidavits in support thereof which you may desire, and a failure on your part to file such objection within said ten (10) days will be taken by the commission as a waiver of such right and the commission will then proceed forthwith to pass upon this motion.

(Signed) ADRIEN F. BUSICK,
Acting Chief Counsel for the Federal Trade Commission.

WASHINGTON, D. C., *May 17, 1921.*

To CLARENCE R. AHALT,
District National Bank Building, Washington, D. C.
Counsel for respondent, Alfred Klesner.

Service of copies of the above notice and motion and affidavit acknowledged this — day of May, 1921.

_____

Counsel for Respondent.

372 Before Federal Trade Commission

[Title omitted.]

Motion to take additional testimony

Now comes Adrien F. Busick, acting chief counsel for the Federal Trade Commission herein, and moves this honorable commission that this proceeding be reopened for the purpose of permitting the attorney for the commission to introduce newly discovered evidence. In support of this motion, the affidavit of Gaylord R. Hawkins is attached hereto and made a part hereof.

(Signed) ADRIEN F. BUSICK,
Acting Chief Counsel for the Federal Trade Commission.

Before Federal Trade Commission

[Title omitted.]

Affidavit of Gaylord R. Hawkins

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered that on this 17th day of May, 1921, personally appeared before me, Warren R. Choate, a notary public, in and for the District of Columbia, Gaylord R. Hawkins, known to me personally to be such, who, being by me first duly sworn upon his oath according to law, deposes and says:

I am an attorney for the Federal Trade Commission, and as such was, on the 21st day of December, 1920, appointed by Adrien F. Busick, acting chief counsel for said commission, trial counsel in this proceeding, and ever since said date have been, and now am, in full and complete charge of the trial and conduct of the same and have been present at, and am familiar with all the hearings heretofore held herein.

Affiant further says that the complaint herein was filed on the 18th day of December, 1920, and thereafter, to wit, on the 18th day of January, 1921, the respondent, Alfred Klesner, filed his answer, and pursuant to the order of this commission thereafter entered, the matter came on for the taking of testimony before Joe J. Dunham, a duly qualified examiner for said commission on the
373 14th 15th, 19th, and 20th days of April, 1921, in the city of Washington, D. C., and on said 20th day of April, affiant concluded the introduction of his evidence in support of the complaint herein, and rested his case, whereupon Clarence R. Ahalt, counsel for the respondent, proceeded to introduce evidence in support of the answer herein, on the 20th, 21st, and 22d days of April, and con-

cluded and rested his case upon said April 22, whereupon the said examiner concluded the hearings and ordered the briefs to be filed. That the complaint herein charges the appropriation and simulation of a trade name, to wit, "The Shade Shop" and alleges inter alia, that respondent has advertised, and held his business out to the trade and general public as "Shade Shop" and the effect of this same has been, and is, to confuse the trade and the general public.

Affiant further says that during the aforesaid hearings, to wit, on the 20th and 21st days of April, 1921, the respondent, Alfred Klesner, testified in support of his answer in substance that he traded only under the name and style of Hooper & Klesner, and in the course of such testimony, as shown at page 757 of the stenographic transcript of the hearings, the said Klesner was by his counsel asked the following question:

> "Mr. Klesner, I will ask you whether you have, since the time Mr. Sammons left 12th and H streets, at any time, and in any manner advertised in the newspapers or any other publications under the trade name of "The Shade Shop," or just "Shade Shop"?

to which question the said Klesner replied as follows:

> "We have not."

That after the said Klesner had so testified, and the hearings herein had been adjourned and concluded by the examiner as aforesaid, the Chesapeake and Potomac Telephone Company, did, on or about the 4th day of May, 1921, publish and issue its Washington telephone directory for the spring of 1921, and that said directory contains a display advertisement in which the respondent advertises and holds his business out to the trade and the general public as "Shade Shop," and affiant is informed, and believes that such advertisement was contracted for by the said Klesner some time during the month of March, 1921, and was so placed and inserted in said directory at the special instance and request of said Klesner, and that the affiant had no knowledge of the aforesaid advertisement prior to the time of the issuance and distribution of the directory as aforesaid, and that the same is competent, relevant and material evidence in this proceeding.

And the affiant further says that the said Klesner while testifying as aforesaid, upon cross-examination as shown at page 807 of the stenographic transcript of the evidence testified that he had requested a representative of said telephone company to take the words "Shade Shop" out of the listing entirely; that affiant has within the last two days talked to such representative of the Chesapeake and Potomac Telephone Company and was informed by him that the said Klesner did not make such request, and affiant is informed, and believes that he, the said representative, will so

testify, and will further testify that the said Klesner not only
374 did not make such request as aforesaid, but on the contrary asserted, claimed, that he had a right to trade under the name "Shade Shop," and that such testimony is competent, material, and relevant to the issues in this proceeding. And further affiant sayeth not.

(Signed) GAYLORD R. HAWKINS.

Subscribed and sworn to before me this 17th day of May, 1921.

[SEAL.] (Signed) WARREN R. CHOATE,
Notary Public.

Commission expires April 5, 1923.

Before Federal Trade Commission

[Title omitted.]

Opposition to motion to reopen and take additional testimony and motion by respondent to strike out

Comes now Alfred Klesner the respondent, by his counsel, Clarence R. Ahalt, and opposes the motion to reopen this case to take additional testimony, filed in this cause and dated May 17, 1921, and filed in the Docket Division May 18, 1921, and moves the commission that said motion be striken out, and denied, and for grounds of said opposition and motion to strike out the respondent says:

1. That there is no authority conferred upon this commission by the act of Congress, approved September 26th, 1914, creating the commission, and acts amendatory and supplemental thereto, but on the contrary that such right to reopen hearing for taking further testimony lies exclusively in such Circuit Court of Appeals in the United States as shall have jurisdiction of the matter after a finding and order by this commission, and on an appeal to said Circuit Court of Appeals by one of the parties to such proceeding and upon satisfactory showing to said Circuit Court of Appeals that there were reasonable grounds for failure to adduce such evidence in the proceeding before the commission.

2. That there is no authority for such motion under the rules promulgated by this commission.

3. That said motion and supporting affidavit does not comply with the general rule of law requiring a showing that such testimony as shall be desired to be taken upon the reopening of the case and a further hearing, could not have been produced at the original hearing.

4. That counsel for the commission had ample opportunity to bring out and discover fully all the facts in connection with the matters and evidence the commission is now desirous of producing as appears on page 807 of the record, when the respondent was testifying and endeavoring to explain the nature of his advertising matter and listings in the telephone directory, counsel for the commission said,

375 "Let us cut out the paid ad"; and later on page 808, while the respondent was testifying about his listings in the commercial part of the telephone directory, counsel for the commission again said, "I am not talking about the commercial part."

5. That there is in law no affidavit filed in support of this motion because of the fact that the paper writing purporting to be an affidavit of Gaylord R. Hawkins is shown to have been subscribed and sworn to before one Warren R. Choate, a notary public, who is assistant secretary to this commission and therefore interested in the subject matter sufficiently to preclude him from administering such oath, as is prohibited by section 558 of the Code of Laws for the District of Columbia.

(Signed) CLARENCE R. AHALT,
Attorney for Respondent.

Before Federal Trade Commission

[Title omitted.]

Order granting motion to reopen

June 17, 1921

The commission having read the motion of Adrien F. Busick, acting chief counsel for the Federal Trade Commission, to reopen this proceeding for the introduction of newly discovered evidence, and the affidavit of Gaylord R. Hawkins thereto annexed, and the respondent's memorandum in opposition thereto, and his motion to strike out, all heretofore filed, and having duly considered the same and being fully advised in the premises, it is

Ordered that the motion of the said Busick be granted and that this proceeding be reopened at 2 o'clock in the afternoon of Thursday, the 23d day of June, 1921, in the offices of the Federal Trade Commission, in the City of Washington, D. C., before Examiner Joe J. Dunham, for the introduction of such newly discovered evidence and for no other purpose.

By order of the commission.

[SEAL.] (Signed) J. P. TOWN, *Secretary.*

Before Federal Trade Commission

376 [Title omitted.]

Notice of motion to take additional testimony

Please take notice that I have this day filed with the Federal Trade Commission a motion to take additional testimony for the purpose of introducing newly discovered evidence, copy of which is hereto annexed, together with affidavit of the respondent, Alfred Klesner, and you shall have right within ten (10) days from receipt of this notice to file any and all objections which you may desire, and the failure on your part to file such objection within said time

will be taken by the commission as a waiver of such right and the commission will then proceed forthwith to pass upon this motion.

(Signed) C. R. AHALT,
Attorney for Respondent.

WASHINGTON, D. C., *July 20, 1921.*

To ADRIEN F. BUSICK,
Acting Chief Counsel for the Federal Trade Commission, Washington, D. C.

Service of copies of the above notice and motion and affidavit acknowledged this — day of July, 1921.

Before Federal Trade Commission

[Title omitted.]

Motion to take additional testimony

Now comes Clarence R. Ahalt, attorney for the respondent in the above-entitled cause and moves this honorable commission for leave to adduce additional and newly discovered evidence, and in support of this motion files herewith affidavit of the respondent, which is hereto attached and made a part hereof.

(Signed) C. R. AHALT,
Attorney for Respondent.

877 Before Federal Trade Commission

[Title omitted.]

Affidavit of Alfred Klesner

UNITED STATES OF AMERICA,
District of Columbia, ss:

Alfred Klesner, being duly sworn, deposes and says that he is the respondent in the above-entitled proceeding and cause.

That heretofore, to wit, on the 17th day of June, 1921, an order was entered by this commission granting leave to acting chief counsel for the commission to reopen this proceeding for the introduction of newly discovered evidence, and in said order fixed the time for the taking of said testimony to be June 23, 1921; and that on said 23rd day of June, 1921, the said hearing was duly and properly continued and adjourned to July 25, 1921, at the hour of 2 o'clock p. m.

That since the conclusion of the introduction of evidence on behalf of the respondent affiant has been informed by a representative of a manufacturer of window-shade cloth and expects such representative to testify that in a conversation he, the said representative, had with W. Stokes Sammons, the alleged proprietor and owner of the window-shade business conducted under the name of The Shade Shop, who is the complaining witness in this proceeding, that said Sammons then and there informed said representa-

tive of his, the said Sammons', intention, whenever called upon to bid upon the manufacture or making of window shades in competition with affiant, that he, the said Sammons, proposed to and would, in order to defeat respondent's possibility of obtaining the award of such contract for such work, figure on and submit a price to such prospective customer at actual cost. Affiant further says that such methods and practices are in violation of the law and rules as laid down and established by this commission, and affiant verily believes that the aforementioned instance is only one of many in which the said W. Stokes Sammons has so conducted his business and endeavored to defeat and deprive your respondent of conducting a window-shade business incident to his general paperhanging, painting, and decorating business.

Affiant further says that the evidence which he is desirous of introducing by the aforesaid witness is competent, relevant, and material evidence in this proceeding, and that the same has been discovered since the conclusion of the introduction of testimony in his behalf.

Wherefore affiant prays that this honorable commission enter an order in this proceeding granting leave to him to introduce
378 such additional testimony at the hearing to be held on July 25, 1921, or at such times to which said hearing might be continued or adjourned.

(Signed) ALFRED KLESNER.

Subscribed and sworn to before me this 20th day of July, 1921.

[SEAL.] (Signed) CHARLES A. SWANN, Jr.,
Notary Public.

Before Federal Trade Commission

[Title omitted.]

Objections to respondent's motion to take additional testimony

Now comes Adrien F. Busick, acting chief counsel for the Federal Trade Commission, and objects to the granting of respondent's motion to take additional testimony heretofore filed on the 23d day of July, 1921, for the reason that the testimony sought to be introduced, as shown by the respondent's affidavit, is wholly immaterial and irrelevant to this proceeding.

This is a case in which it is alleged that the respondent, Alfred Klesner, has simulated or appropriated the trade name of The Shade Shop, which has for a long period of time been used by one W. Stokes Sammons. This is the issue and the only issue in the case. The respondent's affidavit in support of his motion shows on its face that it is his purpose to prove that the said Sammons has said to a representative of a manufacturer of window-shade cloth that he, the said Sammons, intended, whenever called upon to bid upon the manufacture or making of window shades in competition with the respondent, to submit a price at actual cost in order to

defeat the respondent's possibility of obtaining the award of the contract for such work.

It is respectfully submitted that this testimony if introduced would not tend to either prove or disprove any of the issues in this proceeding, and would not be considered by the commission in the final determination of the matter, and therefore the motion should be denied.

(Signed) ADRIEN F. BUSICK,
Acting Chief Counsel.

(Signed) GAYLORD R. HAWKINS,
Attorney.

JULY 23, 1921.

Before Federal Trade Commission

379 [Title omitted.]

Order denying motion to take additional testimony

July 30, 1921

The commission having read the motion of C. R. Ahalt, counsel for the respondent herein, to reopen this proceeding for the introduction of additional and newly discovered evidence, and the affidavit of Alfred Klesner thereto annexed, and the objections of Adrien F. Busick, acting chief counsel for the Federal Trade Commission in opposition thereto, all heretofore filed, and having duly considered the same and being fully advised in the premises, it is

Ordered, That the motion of the aid Ahalt be denied for the reason that the additional testimony sought to be introduced is immaterial and irrelevant to the issues in this proceeding.

By order of the commission.

[SEAL.] (Signed) J. P. YODER,
Secretary.

Before Federal Trade Commission

Docket No. 696

FEDERAL TRADE COMMISSION
v.
ALFRED KLESNER, DOING BUSINESS UNDER THE NAME and Style of Shade Shop, Hooper & Klesner } Docket No. 696

Findings as to the facts, conclusion, and order to cease and desist

June 23, 1922

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Fed-

eral Trade Commission issued and served a complaint upon the respondent, Alfred Klesner, trading under the name and style of Shade Shop, Hooper & Klesner, charging him with the use of unfair methods of competition in commerce, in violation of the provisions of said act. The respondent, Alfred Klesner, trading as Hooper & Klesner, entered his appearance by his attorney, Clarence Ahalt, and, having filed his answer herein, hearings were had
380 and evidence was thereupon introduced in support of his answer before an examiner of the Federal Trade Commission theretofore duly appointed, and thereupon this proceeding came on for final hearing, and the commission having heard argument of counsel and having duly considered the record, and being now fully advised in the premises, makes this its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS

Paragraph one. That the respondent, Alfred Klesner, doing business under the trade name and style of "Shade Shop—Hooper & Klesner," is a resident of the city of Washington, District of Columbia, with his office and principal place of business located at No. 929 H. Street NW., in said city of Washington, engaged in the business of selling wall paper and window shades and doing painting and decorating work throughout the District of Columbia in direct competition with other persons, firms, and corporations similarly engaged.

Paragraph two. That W. Stokes Sammons is a resident of the city of Washington, District of Columbia, and engaged exclusively, since 1901, in the business of manufacturing and selling window shades throughout the said District of Columbia and in near-by towns in States adjoining said District, under the trade name and style of "The Shade Shop," which trade name was adopted and used by him in the year 1901, since which time he has continuously carried on and conducted his said business under said trade name, and is now so carrying on and conducting his said business, and is now, and has been during all of this period the sole and only person, firm, or corporation in the District of Columbia dealing in window shades under the trade name of The Shade Shop.

Paragraph three. That during the period above mentioned, the said Sammons operated stores for the manufacture and sale of window shades under the said trade name of "The Shade Shop," at the following locations in the said city of Washington, District of Columbia, to wit:

1901–1902, 910 E Street NW.
1903, 1649 K Street NW.
1904, 1403 New York Avenue NW.
1905–1907, 813 Fourteenth Street NW.
1907–1909, 2222 H Street NW.
1909–1910, 813 Fourteenth Street NW.
1910–1912, 724 Eleventh Street NW.

1912–1914, 819 Fifteenth Street NW.
1914–1915, southeast corner Twelfth and H Streets NW.
1915–1920, 733 Twelfth Street NW.
1920–1921, 820 Thirteenth Street NW.

Paragraph four. That during all of said period, since the year 1901 to the present time, the said W. Stokes Sammons, in conducting his said business, has held himself out to the trade and to the public generally as "The Shade Shop," by advertisements placed in the leading newspapers published and circulated in the District of Columbia, in the Evening Star, the Washington Post, Knights of Columbus Bulletin, Trade Unionist, in the telephone directory
381 of the said District, and by his letterheads, billheads, and by means of signs prominently displayed on the windows of his several places of business and on his delivery wagons; and his business as a manufacturer and dealer in window shades under such trade name has become established and is well known to dealers in and purchasers of window shades and to the general public in and throughout the District of Columbia and in towns of the States of Maryland and Virginia adjacent thereto, and the trade name, "The Shade Shop," through these twenty-one years of usage, has come to mean and does mean and signify to the window shade buying public the shade business owned and operated by the said W. Stokes Sammons.

Paragraph five. That during the month of May, 1914, the respondent, Alfred Klesner, together with his then partner, one Harry Hooper, leased a certain storeroom and premises at the southeast corner of Twelfth and H Streets NW., in the city of Washington, D. C.; and thereafter, to wit, on the 14th day of May, 1914, the said Hooper and the said Klesner entered into a written lease with said W. Stokes Sammons, by the terms and conditions of which they sublet one-half of the storeroom and one-half of the cellar upon said premises to W. Stokes Sammons, trading as "The Shade Shop," for a period of two years, at the monthly rental of $41.66; that under and by the terms and provisions of this lease, the said Sammons was to have the right to carry on and conduct his said business in and upon the said premises and to place his signs upon the windows of the storeroom; and the said Sammons did, thereafter, establish his shade business in one-half of the storeroom, and placed his sign, "The Shade Shop," upon the windows of the storeroom facing both Twelfth and H Streets. And it was further agreed by and between the respondent and his then partner, Hooper, and the said Sammons, that all of the shade business which might come to this storeroom at the southeast corner of Twelfth and H Streets, was to belong to the said Sammons; that at this time, respondent, Alfred Klesner, was not and never had been engaged in the business of manufacturing or dealing in window shades, other than receiving occasional orders given to his employees engaged in wall papering and decorating work, which orders were turned over to the said W. Stokes Sammons,

or some other shade dealer who filed the orders and gave the respondent his commission, or, as he termed it, his "rake-off."

Paragraph six. That under the aforesaid arrangement the respondent, Alfred Klesner, and his then partner, Harry Hooper, continued to carry on their business of decorating and paper hanging in one-half of the said storeroom, and W. Stokes Sammons continued to carry on his shade business under the trade name of "The Shade Shop" in the other half of the premises until November, 1915, when the business of the said Sammons had increased until his annual gross sales amounted to over $60,000 and he deemed it necessary and advisable to have a storeroom of his own; whereupon he notified the respondent, Alfred Klesner, that he had leased the storeroom on the premises at 733 Twelfth Street NW., in the city of Washington, D. C., and that he would, in the near future, remove his business to said premises; thereafter, to wit, on the morning of the last Sunday in November, 1915 the said Sammons, in company with one
382 of his employes, went to the said store room at the southeast corner of Twelfth and H Streets NW., for the purpose of removing his goods and chattels to his new location. That Sammons had paid to the respondent his rent for the month of November, 1915, which was due and owing under the terms and provisions of the aforesaid lease, and in so entering upon the premises on the morning in question Sammons was not in any way a trespasser. The respondent, Alfred Klesner, was in the storeroom at the time and made no objection whatsoever to Sammons or his employee removing the goods and chattels of Sammons, until they started to remove from the windows of the storeroom the sign "The Shade Shop"; whereupon the respondent, Alfred Klesner, walked to the front of the store, drew a deadly weapon, to wit, a revolver, upon Sammons and his employee and ordered them to cease removing the signs from the store windows; whereupon Sammons withdrew from the premises and called a policeman, who placed the respondent, Klesner, under arrest and took him to the police station, after which Sammons and his employee continued to remove and efface his signs from the windows of the storeroom, and removed all his goods and chattels to his new storeroom, where he continued to conduct and operate his business under the trade name "The Shade Shop." That the respondent, Alfred Klesner, did not at this time make, nor had he at any time prior thereto made, any claim or demand of any kind or character whatsoever upon the said Sammons for and on account of any alleged failure on the part of the said Sammons to continue to occupy this storeroom at the corner of Twelfth and H Streets, as a subtenant, and to pay the monthly rental as provided in the said lease for the remainder of the term thereof.

Paragraph seven. That respondent, Alfred Klesner, incensed and angered at Sammons because of his arrest and the circumstances connected with the removal of Sammons' sign as aforesaid, has refused to speak to Sammons since said trouble in the storeroom above referred to, and has during all this period continued this attitude of

hatred and malice towards Sammons, so that immediately after Sammons had removed his business, as aforesaid, respondent, Klesner, conferred with his then partner, Harry Hooper, and it was decided that they would immediately enter upon the business of dealing in window shades, and that they would go after and get the window-shade business and trade which had been built up on this corner and in this storeroom by the said W. Stokes Sammons, trading under the name of "The Shade Shop;" and in pursuance of this plan and policy and with the further purpose of injuring the said W. Stokes Sammons, the respondent and his said partner placed upon the two windows of their storeroom the sign "Shade Shop," using the same size, style, and color of lettering, and in the same place as that of the sign "The Shade Shop" used theretofore by the said Sammons; and in furtherance of this plan they also placed upon their letterheads and billheads the words "Shade Shop," and caused the Chesapeake & Potomac Telephone Company, operating in the said District of Columbia, to have them listed in its telephone directory under the name and style of "Shade Shop, Hooper & Klesner," and respondent has carried and is now carrying an advertisement in said telephone directory in which he advertises and holds him-
383 self out to the trade and the general public as "Shade Shop, Hooper & Klesner," and respondent is now suffering and permitting said telephone company to list his business in its telephone directories under the trade name "Shade Shop;" and respondent also placed upon his delivery trucks the sign, "Shade Shop, Hooper & Klesner." That the said Sammons continued to operate and conduct his business at 733 Twelfth Street until the year 1920, when he removed to his present location at 820 Thirteenth Street NW. in the city of Washington, D. C., and the respondent, Alfred Klesner, continued to operate his business at the said southeast corner of Twelfth and H Streets until some time in the early part of the year 1921, and there has been considerable confusion in the trade, and customers who have known or heard of "The Shade Shop," as conducted and carried on by the said Sammons, and who desired to purchase window shades therefrom, have been confused and deceived by the sign "Shade Shop," used as aforesaid by the respondent, and have gone to the storeroom of the respondent and there purchased window shades of him in the mistaken belief that they were dealing with the said W. Stokes Sammons; and that on certain occasions, when customers had entered respondent's store and made specific inquiries as to whether this was the storeroom operated by the said Sammons they were deceived by the employees of the respondent and were led to believe that it was the storeroom and the location and place of business of the said W. Stokes Sammons, when, in truth and in fact, the said Sammons was operating and conducting his business under the name of "The Shade Shop," at 723 Twelfth Street NW., as aforesaid. That the use of the term "Shade

Shop" by the respondent in the listing and advertising sections of the telephone directory has caused and is causing similar confusion to the window-shade purchasing public throughout the District of Columbia, and the respondent, Alfred Klesner, is now carrying such paid advertisement in the said telephone directory, and suffering and permitting the said telephone company to list his business under the trade name of "Shade Shop" out of spite to said Sammons, with the purpose and intent to injure his said competitor in his window shade business.

CONCLUSION

That the methods of competition set forth in the foregoing findings as to the facts, and each and all thereof, under the circumstances therein set forth, constitute unfair methods of competition in commerce in the District of Columbia, in violation of the provisions of section 5 of the Federal Trade Commission act, approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

By direction of the commission:

[SEAL.] (Signed) NELSON B. GASKILL,
Chairman.

Dated this 23d day of June, A. D., 1922.

Attest:

(Signed) J. P. YODER, *Secretary.*

384 BEFORE FEDERAL TRADE COMMISSION

Order to cease and desist

June 23, 1922

This proceeding having been heard by the Federal Trade Commission upon the pleadings and the testimony and evidence received by an examiner duly appointed by the commission, and the arguments of counsel for the respondent and for the commission and the commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of an act of Congress approved September 26, 1914, entitled, "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," which said report is hereby referred to and made a part hereof: Now, therefore

It is ordered, that the respondent, Alfred Klesner, his servants, agents, and employees cease and desist from using the words "Shade Shop" standing alone or in conjunction with other words as an identification of the business conducted by him, in any manner of advertisement, signs, stationary, telephone, or business directories, trade lists or otherwise.

It is further ordered, that the respondent, Alfred Klesner, within thirty day from the date of service of this order upon him file with the commission a report, setting forth in detail the manner and form in which he has complied with the order of the commission herein set forth.

By the commission:

[SEAL.] (Signed) J. P. YODER,
Secretary.

In Court of Appeals for the District of Columbia

FEDERAL TRADE COMMISSION, PETITIONER v. ALFRED KLESNER, DOING BUSINESS UNDER THE Name of the Shade Shop, Hooper & Klesner, respondent	Original Docket No. 976

Petition for preliminary injunction pending the completion of an appeal to enforce the commission's orders.

To the honorable Judges of the Court of Appeals for the District of Columbia:

The Federal Trade Commission, petitioner and applicant, under the authority of, and pursuant to, the provisions of an act of
385 Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes" (38 Stat. at L. 717), and hereinafter referred to as the "Federal Trade Commission Act," hereby makes application to this honorable court for the enforcement of its order to cease and desist, and respectfully shows:

(1) That it is a body politic, created, organized and existing under and by virtue of said Trade Commission Act.

(2) That the respondent, Alfred Klesner, is a resident of the District of Columbia and that he is engaged at number 929 H Street NW., in the District of Columbia, in the business of interior decorating, wall papering, painting, and the manufacturing, selling and distributing of window shades in said District and in near-by towns in States adjacent to said District in direct competition with other persons, firms, and corporations similarly engaged.

(3) That the respondent in the course and conduct of his said business was and is now engaged in commerce within the intent and meaning of the provisions of the said Federal Trade Commission Act, and in such business was and is engaged in direct and active competition with other persons, partnerships and corporations similarly engaged.

(4) That the methods of competition in question herein were used by respondent within the District of Columbia, and in said near by towns in States adjacent to said District.

(5) That your petitioner, after a preliminary examination made by it, did on the 18th day of December, 1920, have reason to believe that the respondent had been and was using unfair methods of competition in commerce within the intent and meaning of the provisions of the said Federal Trade Commission Act.

(6) That thereupon it did appear to your petitioner that a proceeding by it in respect to said unfair methods of competition in commerce would be to the interest of the public.

(7) That thereupon and forthwith your petitioner on December 18, 1920, issued its complaint stating its charges in that respect and containing a notice of an order and upon a day and place fixed therein to be filed thirty (30) days after the service of said complaint. A certified copy of said complaint is attached hereto marked as Exhibit "A" and made a part hereof; that said complaint also appears at large in transcript of the record which is referred to in paragraph — in this petition.

(8) That your petitioner on December 22, 1920, served said complaint upon respondent.

(9) That thereafter and on December 18, 1921, respondent filed his answer to said complaint and entered his appearance in said proceeding by his attorney. A certified copy of this answer is hereto attached and marked Exhibit "B" and made a part hereof. This answer also appears at large in the said transcript of record referred to in paragraph — hereof.

(10) That thereafter hearings were duly held on said complaint and answer and testimony and exhibits in respect thereto were offered and received on behalf of your petitioner and on behalf of respondent.

(11) That said testimony so taken was reduced to writing and the same, together with the said exhibits were filed in the office
386 of the Federal Trade Commission and is set forth at large in said transcript of the record referred to in paragraph — hereof.

(12) That thereafter briefs were filed by counsel for the Federal Trade Commission, the petitioner, and by counsel for respondent, pursuant to Rule 15 of the Rules of Practice before the said commission.

(13) That thereafter the proceeding came on regularly for oral argument and for final hearing before the said Federal Trade Commission, the same was fully argued by counsel on behalf of your petitioner and by counsel on behalf of respondent; that thereafter and after full and careful consideration of the entire record in said proceeding your petitioner was and still is of the opinion that the methods of competition in question in said proceedings were and are prohibited by the provisions of said Federal Trade Commission Act; whereupon your petitioner on the 23rd day of June, 1922, did make and enter in said proceeding a report in writing in which it stated its findings as to the facts and its conclusion as appears at

large in full in said transcript of record referred to in paragraph — hereof, is in words and figures as follows:

"FINDINGS AS TO THE FACTS

"Paragraph one. That the respondent, Alfred Klesner, doing business under the trade name and style of 'Shade Shop—Hooper & Klesner,' is a resident of the city of Washington, District of Columbia, with his office and principal place of business located at No. 929 H Street NW., in said city of Washington, engaged in the business of selling wall paper and window shades and doing painting and decorating work throughout the District of Columbia, in direct competition with other persons, firms, and corporations similarly engaged.

"Paragraph two. That W. Stokes Sammons is a resident of the city of Washington, District of Columbia, and engaged exclusively, since 1901, in the business of manufacturing and selling window shades throughout the said District of Columbia and in nearby towns in States adjoining said District, under the trade name and style of 'The Shade Shop,' which trade name was adopted and used by him in the year 1901, since which time he has continuously carried on and conducted his said business under said trade name, and is now so carrying on and conducting his said business, and is now, and has been during all of this period the sole and only person, firm, or corporation in the District of Columbia dealing in window shades under the trade name of 'The Shade Shop.'

"Paragraph three. That during the period above mentioned, the said Sammons operated stores for the manufacture and sale of window shades under the said trade name of 'The Shade Shop,' at the following locations in the said city of Washington, District of Columbia, to wit:

1901–1902, 910 E Street NW.
1903, 1649 K Street NW.
1904, 1403 New York Avenue NW.
1905–1907, 813 Fourteenth Street NW.
387 1907–1909, 2222 H Street NW.
1909–1910, 813 Fourteenth Street NW.
1910–1912, 724 Eleventh Street NW.
1912–1914, 819 Fifteenth Street NW.
1914–1915, Southeast corner Twelfth and H Streets NW.
1915–1920, 733 Twelfth Street NW.
1920–1921, 820 Thirteenth Street NW.

"Paragraph four. That during all of said period, since the year 1901 to the present time, the said W. Stokes Sammons, in conducting his said business, has held himself out to the trade and to the public generally as 'The Shade Shop,' by advertisements placed in the leading newspapers published and circulated in the District of Columbia, in the Evening Star, the Washington Post, Knights

of Columbus Bulletin, Trade Unionist, in the telephone directory of the said District, and by his letterheads, billheads, and by means of signs prominently displayed on the windows of his several places of business, and on his delivery wagons; and his business as a manufacturer and dealer in window shades under such trade name has become established and is well known to dealers in and purchasers of window shades, and to the general public in and throughout the District of Columbia, and in towns of the States of Maryland and Virginia adjacent thereto, and the trade name, 'The Shade Shop,' through these twenty-one years of usage, has come to mean and does mean and signify to the window shade buying public, the shade business owned and operated by the said W. Stokes Sammons.

"Paragraph five. That during the month of May, 1914, the respondent, Alfred Klesner, together with his then partner, one Harry Hooper, leased a certain storeroom and premises at the southeast corner of Twelfth and H Streets NW., in the city of Washington, D. C.; and thereafter, to wit, on the 14th day of May, 1914, the said Hooper and the said Klesner entered into a written lease with said W. Stokes Sammons, by the terms and conditions of which they sublet one-half of the storeroom and one-half of the cellar upon said premises to W. Stokes Sammons, trading as 'The Shade Shop,' for a period of two years, at the monthly rental of $41.66; that under and by the terms and provisions of this lease, the said Sammons was to have the right to carry on and conduct his said business in and upon the said premises and to place his signs upon the windows of the storeroom; and the said Sammons did, thereafter, establish his shade business in one-half of the storeroom, and placed his sign, 'The Shade Shop,' upon the windows of the storeroom facing both Twelfth and H Streets. And it was further agreed by and between the respondent and his then partner, Hooper, and the said Sammons, that all of the shade business which might come to this storeroom at the southeast corner of Twelfth and H Streets, was to belong to the said Sammons; that at this time, respondent, Alfred Klesner, was not and never had been engaged in the business of manufacturing or dealing in window shades, other than receiving occasional orders given to his employees engaged in wall papering and decorating works, which orders were turned over to the said W. Stokes Sammons, or some other shade dealer, who filled the orders and gave the respondent his commission, or, as he termed it, his 'rake-off.'

"Paragraph six. That under the aforesaid arrangement the respondent, Alfred Klesner, and his then partner, Harry Hooper,
388 continued to carry on their business of decorating and paper hanging in one-half of the said storeroom, and W. Stokes Sammons continued to carry on his shade business under the trade name of 'The Shade Shop' in the other half of the premises until November, 1915, when the business of the said Sammons had increased until his annual gross sales amounted to over $60,000, and he deemed it necessary and advisable to have a storeroom of his own; whereupon he notified the respondent, Alfred Klesner, that he had leased the

storeroom on the premises at 733 Twelfth Street NW., in the city of Washington, D. C., and that he would, in the near future, remove his business to said premises; thereafter, to wit, on the morning of the last Sunday in November, 1915, the said Sammons in company with one of his employees, went to the said storeroom at the southeast corner of Twelfth and H Streets NW., for the purpose of removing his goods and chattels to his new location. That Sammons had paid to the respondent his rent for the month of November, 1915, which was due and owing under the terms and provisions of the aforesaid lease, and in so entering upon the premises on the morning in question Sammons was not in any way a trespasser. The respondent, Alfred Klesner, was in the storeroom at the time and made no objection whatsoever to Sammons or his employee removing the goods and chattels of Sammons, until they started to remove from the windows of the storeroom the sign 'The Shade Shop'; whereupon the respondent, Alfred Klesner, walked to the front of the store, drew a deadly weapon, to wit, a revolver, upon Sammons and his employee and ordered them to cease removing the signs from the store windows; whereupon Sammons withdrew from the premises and called a policeman, who placed the respondent, Klesner, under arrest and took him to the police station, after which Sammons and his employee continued to remove and efface his signs from the windows of the storeroom, and removed all his goods and chattels to his new storeroom, where he continued to conduct and operate his business under the trade name 'The Shade Shop.' That the respondent, Alfred Klesner, did not at this time make, nor had he at any time prior thereto made, any claim or demand of any kind or character whatsoever upon the said Sammons for and on account of any alleged failure on the part of said Sammons to continue to occupy this storeroom at the corner of Twelfth and H Streets, as a subtenant, and to pay the monthly rental as provided in the said lease for the remainder of the term thereof.

"Paragraph seven. That respondent, Alfred Klesner, incensed and angered at Sammons because of his arrest and the circumstances connected with the removal of Sammons' sign as aforesaid, has refused to speak to Sammons since said trouble in the storeroom above referred to, and has during all this period continued this attitude of hatred and malice towards Sammons, so that immediately after Sammons had removed his business, as aforesaid, respondent, Klesner, conferred with his then partner, Harry Hooper, and it was decided that they would immediately enter upon the business of dealing in window shades, and that they would go after and get the window-shade business and trade which had been built up on this corner and in this storeroom by the said W. Stokes Sammons, trading under the name of 'The Shade Shop'; and in pursuance of this
389 plan and policy and with the further purpose of injuring the said W. Stokes Sammons, the respondent and his said partner placed upon the two windows of their storeroom the sign 'Shade Shop,' using the same size, style, and color of lettering, and in the

same place as that of the sign 'The Shade Shop' used theretofore by the said Sammons; and in furtherance of this plan they also placed upon their letterheads and billheads the words 'Shade Shop,' and caused the Chesapeake & Potomac Telephone Company, operating in the said District of Columbia, to have them listed in its telephone directory under the name and style of 'Shade Shop, Hooper & Klesner,' and respondent has carried and is now carrying an advertisement in said telephone directory in which he advertises and holds himself out to the trade and the general public 'Shade Shop, Hooper & Klesner,' and respondent is now suffering and permitting said telephone company to list his business in its telephone directories under the trade name 'Shade Shop'; and respondent also placed upon his delivery trucks the sign, 'Shade Shop, Hooper & Klesner.' That the said Sammons continued to operate and conduct his business at 733 Twelfth Street until the year 1920, when he removed to his present location at 820 Thirteenth Street NW., in the city of Washington, D. C., and the respondent, Alfred Klesner, continued to operate his business at the said southeast corner of Twelfth and H Streets until some time in the early part of the year 1921, and there has been considered confusion in the trade, and customers who have known or heard of 'The Shade Shop,' as conducted and carried on by the said Sammons, and who desired to purchase window shades therefrom, have been confused and deceived by the sign 'Shade Shop,' used as aforesaid by the respondent, and have gone to the storeroom of the respondent and there purchased window shades of him in the mistaken belief that they were dealing with the said W. Stokes Sammons; and that on certain occasions, when customers had entered respondent's store and made specific inquiries as to whether this was the storerooom operated by the said Sammons, they were deceived by the employees of the respondent and were led to believe that it was the storeroom and the location and place of business of the said W. Stokes Sammons, when, in truth and in fact, the said Sammons was operating and conducting his business under the name of 'The Shade Shop,' at 723 Twelfth Street NW., as aforesaid. That the use of the term 'Shade Shop' by the respondent in the listing and advertising sections of the telephone directory has caused and is causing confusion to the window-shade purchasing public throughout the District of Columbia, and the respondent, Alfred Klesner, is now carrying such paid advertisement in the said telephone directory, and suffering and permitting the said telephone company to list his business under the trade name of 'Shade Shop' out of spite to said Sammons, with the purpose and intent to injure his said competitor in his window-shade business.

"CONCLUSION

"That the methods of competition set forth in the foregoing findings as to the facts, and each and all thereof, under the circumstances therein set forth, constitute unfair methods of competi-

tion in commerce in the District of Columbia, in violation of
390 the provisions of section 5 of the Federal Trade Commission Act, approved September 26, 1914, entitled 'An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes.'"

(14) That thereupon and forthwith your petitioner did on the 23d day of June, 1922, issue and enter in said proceedings its order to cease and desist, which order appears at large in said transcript of record referred to in paragraph — hereof, and is in words and figures as follows:

"ORDER TO CEASE AND DESIST

"This proceeding having been heard by the Federal Trade Commission upon the pleadings and the testimony and evidence received by an examiner duly appointed by the commission, and the arguments of counsel for the respondent and for the commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of an act of Congress approved September 26, 1914, entitled 'An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,' which said report is hereby referred to and made a part hereof: Now, therefore

"*It is ordered*, that the respondent, Alfred Klesner, his servants, agents, and employees cease and desist from using the words "Shade Shop" standing alone or in conjunction with other words as an identification of the business conducted by him, in any manner of advertisement, signs, stationery, telephone, or business directories, trade lists or otherwise.

"*It is* further ordered, that the respondent, Alfred Klesner, within thirty days from the date of service of this order upon him file with the commission a report, setting forth in detail the manner and form in which he has complied with the order of the commission herein set forth."

(15) That thereafter and on July 5, 1922, your petitioner did cause said order to cease and desist to be duly served upon respondent as required by law.

(16) That said order to cease and desist is now in effect and has been continuously so in effect at all times since date of its issuance as aforesaid.

(17) That your petitioner charges, on information which it believes to be true, and therefore states the facts to be that respondent failed, neglected, and refused and still fails and neglects and refuses and intends to refuse to obey said order to cease and desist as more fully appears hereinafter in the following paragraphs and affidavits herein.

(18) That in the course and conduct of his said business the respondent has ever since the said date of the service of the said order

to cease and desist upon him published, circulated, and distributed and continues to publish, circulate, and distribute to the public in commerce in the District of Columbia advertisements, letters, and other printed matter of his business under the name "Shade Shop."

(19) That he, at all of said times, caused and still causes his advertisements and the name "Shade Shop" used in connection with his business to appear in the "Washington Classified Business
391 Directory" and in the "Alphabetical List" of "Washington Subscribers" for the telephone service of the Chesapeake & Potomac Telephone Company in the District of Columbia and near-by places.

(20) That he at all of said times had upon the front of his place of business and still has in large letters the words "Shade Shop."

(21) That during all of said times the respondent has carried and still carries in prominent lettering the words "Shade Shop" upon his order and delivery truck.

(22) That in carrying on his said business as described above the respondent has been during all of said times and now is in active, direct competition with said W. Stokes Sammons, doing business under the name "The Shade Shop" in the District of Columbia and near-by places.

(23) That in support of the charges and allegations set forth herein relative to the failure to obey the said order to cease and desist your petitioner files herewith the affidavit of A. W. Mehlfeld, sworn to the 31st day of March, 1924, marked "Exhibit A," the affidavit of W. Stokes Sammons, sworn to the 4th day of April, 1924, and marked as "Exhibit B," and the affidavit of F. S. Whitman, sworn to the — day of ——, 1924, and marked "Exhibit C."

(24) That the respondent has at all times since the service upon him of the commission's said order to cease and desist neglected and refused and still neglects and refuses to obey the said order.

(25) That subsequent to the said service of the said order to cease and desist and in answer thereto the respondent set forth in a letter, of which "Exhibit D" is a copy, his refusal to obey said order.

(26) That your petitioner certifies and files herewith in this court a transcript of the entire record in the proceeding had before it in this matter, including all the testimony taken, and the report and order to cease and desist of the Federal Trade Commission, your petitioner.

(27) That respondent, in and by his continued failure and neglect to obey said order to cease and desist of your petitioner hampers, obstructs and impedes interstate commerce and commerce in the District of Columbia and the fair and legitimate competition therein.

(28) That respondent by his continued failure and neglect to obey said order of your petitioner is causing immediate and irreparable injury, loss and damage to the public and to the respondent's competitors, for which there is no adequate remedy at law.

Wherefore your petitioner, being without remedy in the premises except in this court, as by statute in such case made and provided prays this honorable court:

(1) That it cause notice to be served upon said respondent Alfred Klesner of the filing of this application and the transcript as required by law.

(2) That it (a) dispense with the printing of the record in this proceeding and set the cause down for final hearing within a short day, not exceeding 10 days from the date of service upon respondent a notice of the filing of this application and the transcript, as prayed for above; or (b) if the court be unwilling to dispense with the printing of the record and set the cause for final hearing upon said short day, it grant and cause to be served upon the said respondent Alfred Klesner, a preliminary mandatory injunction directing
392 said respondent, his agents, servants, and employees to cease and desist during the pendency of this proceeding and until the further order of this court from directly or indirectly.

"Using the words 'Shade Shop' standing alone or in conjunction with other words as an identification of the business conducted by him, in any manner of advertisement, signs, stationery, telephone, or business directories, trade lists or otherwise."

(29) That it make and enter upon the pleadings, testimony and proceedings set forth in said transcript filed herein a decree affirming the said order to cease and desist of your petitioner and directing respondent to obey and comply therewith and for such other and further relief as may be appropriate in the premises.

FEDERAL TRADE COMMISSION,
By OTIS B. JOHNSON,
Its secretary thereunto duly authorized.

W. H. FULLER,
Chief Counsel.
ADRIEN F. BUSICK
CHARLES MELVIN NEFF,
Attorneys for Petitioner.

DISTRICT OF COLUMBIA, *ss:*

Otis B. Johnson, of full age, being duly sworn, deposes and says that he is the secretary of the above-named petitioner, Federal Trade Commission, and is duly authorized to make this affidavit on behalf of said petitioner; that he has read the foregoing petition and is familiar with the contents thereof, and that the said petition is true of his own knowledge except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

OTIS B. JOHNSON.

Subscribed and sworn to before me this 12th day of May, 1924.
[SEAL.]

LUTHER H. WARING,
Notary Public in and for the District of Columbia.

My commission expires July 26, 1927.

Affidavit—Exhibit A

In the Court of Appeals for the District of Columbia

FEDERAL TRADE COMMISSION, PETITIONER v. ALFRED KLESNER, DOING BUSINESS UNDER the Name and Style of "Shade Shop," Hooper & Klesner," respondent	Original Docket No. —

APPLICATION FOR PRELIMINARY MANDATORY INJUNCTION FOR ENFORCEMENT OF ORDER OF FEDERAL TRADE COMMISSION

A. W. Mehlfeld, being duly sworn, upon his oath, deposes and says:

(1) That Leet Brothers (Inc.) is a corporation organized for the purpose, and for many years has been and now is engaged in
393 the District of Columbia, at 725 Fourteenth Street NW., in the city of Washington, in the said District, in the business of making photographs of persons, places, and objects.

(2) That your deponent is over 21 years of age. That he is now and for some time past has been employed by the said Leet Brothers (Inc.), as an artist to take and develop said photographs as described above. That he is skilled in the science and art of taking and developing photographs. That at the direction of his employer, the said Leet Brothers (Inc.), and on the 23d of March, 1924, he made a photograph of the front of a place of business owned and operated by Alfred Klesner, doing business under the name and style of "Shade Shop, Hooper & Klesner," located at 929 H Street NW., in the said District of Columbia.

(3) That the said photograph was developed by him for said Leet Brothers (Inc.). That at the time of the taking of said photograph he was careful to take and did take a skillful and accurate photograph of the said "Shade Shop," belonging to the said Alfred Klesner, located at said No. 929 H Street NW., Washington, D. C. That a copy of the said photograph is hereto attached and made a part of this affidavit, and that it is a true, correct, and faithful representation of the object and place which it purports to represent.

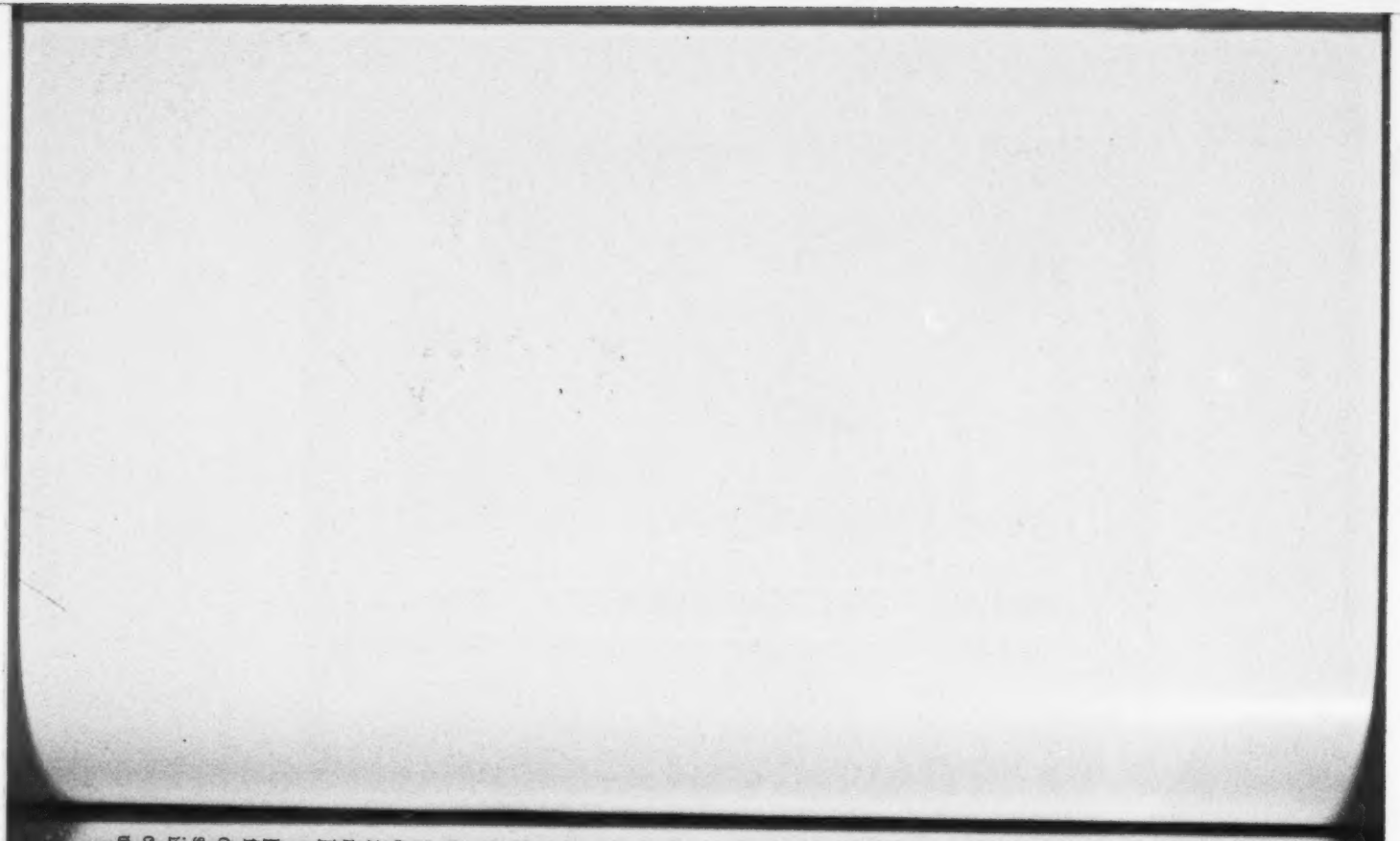
(Signed) A. W. MEHLFELD,
Deponent.

Subscribed and sworn to before me this 30th March, 1924, in the city of Washington, District of Columbia.

[SEAL.] (Signed) MARY A. SHAW,
Notary, D. C.

303

426



Affidavit—Exhibit B

In the Court of Appeals for the District of Columbia

FEDERAL TRADE COMMISSION, PETITIONER v. ALFRED KLESNER, DOING BUSINESS UNDER THE Name and Style of "Shade Shop," Hooper & Klesner, respondent	Original Docket No. 976

APPLICATION FOR PRELIMINARY MANDATORY INJUNCTION FOR ENFORCEMENT OF ORDER OF FEDERAL TRADE COMMISSION

W. Stokes Sammons, being duly sworn, upon his oath, deposes and says:

(1) That he is over 21 years of age, that he is a resident of the District of Columbia, of the United States of America, that he as an individual has been engaged continuously and exclusively in the business of manufacturing, selling, and distributing window shades throughout the said District and in near-by towns in States adjoining said District, under the trade name and style of "The Shade Shop."

394 (2) That this trade name was first adopted and used by him. That it was first used by him in the year 1901, since which time he has continuously carried on and conducted his business of manufacturing and selling window shades under the trade name "The Shade Shop."

(3) That in said business he has been for some years past in competition in commerce in said District and said neighboring towns in States adjoining said District with one Alfred Klesner, manufacturing, selling, and distributing window shades in said District and said neighboring towns, under the name and style of "Shade Shop."

(4) That on or about 18th December, 1920, the Federal Trade Commission, having reason to believe that the said Alfred Klesner in conducting his aforesaid business was using unfair methods of competition therein in respect to the business of this affiant, issued its complaint charging the said Klesner with the use of unfair methods of competition. To this complaint, the respondent, Alfred Klesner, made answer.

(5) That hearings were had upon the issues made by the said complaint and answer and evidence received in respect of the same before an examiner of the said commission, that this proceeding came on for hearing, and the commission, after hearing argument of counsel, duly considered the record, and being fully advised in the premises, did on the 23d of June, 1922, make its findings of facts and its conclusion that the use by the defendant of the name "Shade Shop" under the circumstances and conditions set forth in said findings was

an unfair method of competition in commerce and in violation of the said Federal Trade Commission Act.

(6) That consequent upon its said findings and its said conclusion thereupon made, the said commission on or about June 23, 1922, issued and served upon the said Alfred Klesner its order to him, his servants, agents, and employees to cease and desist from the use of the words "Shade Shop" standing alone or in conjunction with other words as an identification of the business conducted by the said Klesner, in any manner of advertisement, signs, stationery, telephone, or business directories, trade lists, or otherwise.

(7) That the said Alfred Klesner, since the issuance of the said order, has not obeyed and is not obeying the same, but on the contrary is willfully, intentionally, and maliciously violating the same. During the year last past he has advertised his business under the name "Shade Shop" in the "Washington Classified Business Directory," a telephone directory owned and published by the Chesapeake and Potomac Telephone Company for Washington and nearby places.

(8) That this advertisement is a two-inch, four-column strip in solid black Gothic, of the same size, namely, 42 point, as the words "The Shade Shop" in deponent's advertisement described below. That the said respondent's advertisement appears at the top of page 491 of the present issue of the said "Washington Classified Business Directory" on a page opposite to affiant's advertisement in the same telephone directory at the top of page 490.

395 "THE SHADE SHOP"
W. Stokes Sammons, Prop.
Exclusive Manufacturers of
WINDOW SHADES
830 13th St. NW. Main 4874

Hooper & Klesner
SHADE SHOP
929 H St. NW.
MAIN 4763

(9) That in the alphabetical list of the "Washington Subscribers" for telephone service by the said Chesapeake and Potomac Telephone Company, the words "Shade Shop" of the respondent's said business appear in the present issue on page 206, directly next to and above the words "The Shade Shop" of deponent's said business. That the use of the words "Shade Shop" by the respondent and his said advertisement has confused, misled, and deceived, and continues to confuse, mislead, and deceive the purchasing public as to the identity of the deponent.

(10) That the respondent in further violation of the said order by the commission is using the words "Shade Shop" in large and conspicuous letters upon the sides and the tail gate of his delivery truck. That this delivery truck is used by respondent in the conduct of his business of making, selling, and delivering of window shades in competition with deponent, all to the confusion and deception of the purchasing public.

(11) That the respondent in still further violation of the said order of the commission uses continuously, and for a long time past

has used, the words "Shade Shop" in a conspicuous place upon the front of his place of business of making, selling, and distributing window shades at the said No. 929 H Street NW., in the said District of Columbia, in competition with your deponent, all to the confusion and deception of the purchasing public.

(12) The acts complained of in the allegations made in the complaint herein and found to be committed by the respondent as set forth in the findings of fact made by the commission constitute irreparable mischief; that they destroy the very substance of your deponent's estate in his said business because they deceive and defraud the purchasing public, and permit the respondent opportunity to represent his place of business as the place of business of deponent, and permit the respondent to pass off his goods as and for the goods of your deponent; that these said acts of the respondent are continuous in their nature and not merely repeated acts of trepass; that there is no instant of time when the said acts can be said to be complete so that the extent of the damage may be estimated; that they are vexatiously persisted in, and the injuries resulting are not capable of compensation in terms of money.

(Signed) W. STOKES SAMMONS.

Subscribed and sworn to before me, this the 4th day of April, 1924, in the city of Washington, District of Columbia.

[SEAL.] (Signed) ANNE C. BRENNAN,
Notary.

396 *Affidavit—Exhibit C*

In the Court of Appeals for the District of Columbia

FEDERAL TRADE COMMISSION, PETITIONER
v.
ALFRED KLESNER, DOING BUSINESS UNDER THE Name and Style of "Shade Shop, Hooper & Klesner," respondent
} Original Docket No. 976

APPLICATION FOR PRELIMINARY MANDATORY INJUNCTION FOR ENFORCEMENT OF ORDER OF FEDERAL TRADE COMMISSION

Mr. F. S. Whitman, being duly sworn, upon his oath, deposes and says:

(1) That he is the directory manager of the Chesapeake and Potomac Telephone Company, located at 723 Thirteenth Street NW., in the city of Washington, District of Columbia. That said telephone company is the owner and publisher of the "Washington Classified Business Directory" and of the "Alphabetical List" of "Washington Subscribers" for its telephone service. That he is employed by the said telephone company to receive contracts for

advertising space in the said "Washington Classified Business Directory." That on or about the 11th day of December, 1922, Alfred Klesner, doing business under the name and style of "Shade Shop, Hooper & Klesner," entered into a contract with the said telephone company for a two-inch, four-column strip of advertising matter to appear in said directory, commencing with the spring of 1923, and that since said December 11, 1922, there has been a renewal of said contract for the continued appearance of the said advertising space. It is the intention of the said telephone company to continue the appearance of the said advertisement in the spring 1924 issue of said directory.

(2) That by reason of and in accord with the terms of said contract the said telephone company printed and published in the said "Business Directory" a two-inch, four-column strip. This strip appears at the top of page 491 of said directory in words and figures as follows:

"Hooper & Klesner

SHADE SHOP

929 H St., NW.

MAIN 4763"

(3) That this said advertising strip of said Alfred Klesner appears in said "Classified Business Directory" directly opposite to a five-inch, four-column strip of W. Stokes Sammons at the top of the preceding page, to wit, page 490, and facing said page 491. That this said strip of W. Stokes Sammons appearing at top of said page 490 is in words and figures as follows:

397 "'THE SHADE SHOP'

W. Stokes Sammons, Prop.

Exclusive Manufacturers of

WINDOW SHADES

830 13th St., NW. Main 4874"

(4) That in each of the said advertisements the words "Shade Shop" appear in the same relative position and are in solid black block Gothic, 42 point, as more clearly appears in a copy of said telephone directory, hereto attached and made a part hereof.

(5) That in the said "Alphabetical List" of said "Washington Subscribers" the words "Shade Shop" denoting the business of the said Alfred Klesner appear with the telephone number of his said

THE SHADE SHOP
W STOKES SAMMONS

business immediately above the words "The Shade Shop," denoting the business of the said W. Stokes Sammons.

(Signed) F. S. WHITMAN.

Subscribed and sworn to before me, this 5th day of May, 1924, in the city of Baltimore, county of Baltimore, State of Maryland.

(Signed) HARRY F. MEESTER,
Notary.

[Seal and certificate of notary's authority.]

Affidavit—Exhibit D

In the Court of Appeals for the District of Columbia

FEDERAL TRADE COMMISSION, PETITIONER
v.
ALFRED KLESNER, DOING BUSINESS UNDER the Name and Style of "Shade Shop," Hooper & Klesner, respondent
Original Docket No. 976

APPLICATION FOR PRELIMINARY MANDATORY INJUNCTION FOR ENFORCEMENT OF ORDER OF FEDERAL TRADE COMMISSION

Grover M. Plew, being duly sworn, upon his oath, deposes and says:

(1) That Leet Brothers (Inc.) is a corporation organized for the purpose, and for many years has been and now is engaged in the District of Columbia, at 725 Fourteenth Street NW., in the city of Washington, in the said District, in the business of making photographs of persons, places, and objects.

(2) That your deponent is over 21 years of age. That he is now and for some time past has been employed by the said Leet Brothers (Inc.) as an artist to take and develop said photographs as described above. That he is skilled in the science and art of taking and developing photographs. That at the direction of his employer, the said Leet Brothers (Inc.), and on the 10th day of May, 1924, he made a photograph of the front of a place of business owned
398 and operated by W. Stokes Sammons, doing business under the name and style of "The Shade Shop," located at 820 Thirteenth Street NW., in the said District of Columbia.

(3) That the said photograph was developed by him for said Leet Brothers (Inc.). That at the time of the taking of said photograph he was careful to take and did take a skillful and accurate photograph of the said "The Shade Shop" belonging to the said W. Stokes Sammons, located at said No. 820 Thirteenth Street NW., Washington, D. C. That a copy of the said photograph is hereto attached and made a part of this affidavit and that it is a true, cor-

rect, and faithful representation of the object and place which it purports to represent.

(Signed) GROVER M. PLEW,
Deponent.

Subscribed and sworn to before me this 10th day of May, 1924, in the city of Washington, District of Columbia.

[SEAL.] (Signed) LUTHER H. WARING,
Notary.

[Copy]

EXHIBIT D

WASHINGTON, D. C., *August 12, 1922.*

FEDERAL TRADE COMMISSION,
Washington, D. C.

In re: Docket 696.

GENTLEMEN: Replying to your letter of August 10th, relative to the report called for, entered in this case, if your order indicates that we are to cease and desist from operating a shade shop and making same known to the public, we naturally as a matter of self-preservation refuse to comply to same, as this order would be too grossly unfair to pass in any court of appeals.

Very respectfully,

(Signed) HOOPER & KLESNER,
Per A. KLESNER.

FEDERAL TRADE COMMISSION

Washington, D. C.

I, Otis B. Johnson, secretary of the Federal Trade Commission, being charged with the custody of the official files thereof, do hereby certify that the annexed are full, true, and complete copies of:

Complaint of the commission, issued December 18, 1920, and answer of respondent, filed January 18, 1921, in Docket No. 696, Federal Trade Commission *v.* Alfred Klesner, doing business under the name and style of Shade Shop, Hooper & Klesner.

In testimony whereof, I hereunto subscribe my name and affix the seal of the said Federal Trade Commission at my office in the city of Washington, D. C., this 12th day of May, A. D. 1924.

[SEAL.] OTIS B. JOHNSON,
Secretary.

399 UNITED STATES OF AMERICA,
Before the Federal Trade Commission, ss:

At a regular session of the Federal Trade Commission held at its office on the city of Washington, D. C., on the 18th day of December, A. D. 1920.

Present Huston Thompson (chairman), Nelson B. Gaskill, Jno. Garland Pollard, Victor Murdock, commissioners.

FEDERAL TRADE COMMISSION v. ALFRED KLESNER, DOING BUSINESS UNDER THE TRADE NAME AND STYLE OF SHADE SHOP, HOOPER & KLESNER	Docket No. 696

Complaint in the matter of the alleged violation of section 5 of an act of Congress approved September 26, 1914

The Federal Trade Commission having reason to believe, from a preliminary investigation made by it, that Alfred Klesner, doing business under the trade name and style of Shade Shop, Hooper & Klesner, hereinafter referred to as respondent, has been and is now using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and, it appearing that a preceeding by it in respect thereof would be to the interest of the public, issues this complaint stating its charges in that respect on information and belief as follows:

Paragraph one. That the respondent, Alfred Klesner, doing business under the trade name and style of Shade Shop, Hooper & Klesner, is a resident of the city of Washington, District of Columbia, with his office and principal place of business located at the southeast corner of Twelfth and H Streets NW., in said city, engaged in the business of selling wall paper and window shades throughout the District of Columbia in direct competition with other persons, firms, and corporations similarly engaged.

Paragraph two. That W. Stokes Sammons is a resident of the city of Washington, District of Columbia, engaged since the year 1907 in the business of manufacturing and selling window shades throughout said District of Columbia under the trade name and style of The Shade Shop which he adopted in 1907 and under which he has continually carried on and conducted, and is now carrying on and conducting, his said business. That during such period he has owned and operated stores for the manufacture and sale of window shades, under the name of The Shade Shop at the following locations in said city of Washington, to wit:

1907–1909, 1222 H Street NW.,
1909–1910, 813 Fourteenth Street NW.,

1910–1912, 724 Eleventh Street NW.,
1912–1914, 819 Fifteenth Street NW.,
1914–1915, Corner of Twelfth and H Streets NW.,
1915–date, 733 Twelfth Street NW.,

and during all of such period has by advertisements placed in newspapers of general circulation throughout the District of Columbia and by letterheads, billheads, and in city and telephone directories and by signs prominently displayed upon his windows and various places of business and by other means, held himself out to the trade and general public as The Shade Shop and as such has become, and is, well-known and established to dealers and purchasers of window shades and the general public in and throughout said District of Columbia.

Paragraph three. That in May, 1914, the respondent, Alfred Klesner, then in partnership with one, Harry Hooper, trading as Hooper & Klesner, and engaged in the business of painters, paper hangers, and decorators leased a storeroom located at the southeast corner of Twelfth and H Streets NW., in the city of Washington, District of Columbia, renting one-half of said store to the said W. Stokes Sammons, who occupied and used the same for the manufacture and sale of window shades, neither the said respondent nor the said Hooper being then or theretofore engaged in selling window shades, and the said Sammons utilized one of the two show windows to said store to display window shades, having his trade name THE SHADE SHOP prominently displayed thereon; that thereafter, to wit, in November, 1915, said Sammons moved his business to a storeroom located two doors south on Twelfth Street, to wit, No. 733 Twelfth Street NW., in said city of Washington, where he has ever since and is now carrying on and conducting his business under the trade name of The Shade Shop.

Paragraph four. That the respondent, Alfred Klesner, at the time of such removal as aforesaid, refused to permit the said Sammons to remove his sign "The Shade Shop" from the show window and premises at Twelfth and H Strets NW., in said city of Washington, and thereafter erased and removed the word "The" from said signs and proceeded to engage in the business of manufacturing and selling window shades, and ever since has manufactured and sold and is now selling and offering to sell window shades to the general public under the trade name and style of Shade Shop, Hooper & Klesner, at and in that portion of the said storeroom formerly occupied by the said Sammons, trading as "The Shade Shop" and the respondent, Klesner, having dissolved his partnership with the said Hooper in the year 1919 has ever since carried on and conducted his business as aforesaid and ever since November, 1915, has left the sign "Shade Shop" upon the said premises at the corner of Twelfth and H Streets NW.; has carried the sign Shade Shop on the side window of an auto truck owned and operated by him; has caused and permitted the telephone directory for the city of Washington to list his business as Shade Shop, Hooper

& Klesner, and by other means has advertised and held his business out to the trade and general public as Shade Shop. That the effect of such simulation and appropriation of name has been, and is, among others.

(a) To confuse the trade and general public and to cause customers and prospective customers of the said Sammons to trade and deal with the respondent in the belief that they were trading and dealing with the said Sammons.

(b) To mislead and deceive the trade and general public into the erroneous belief that The Shade Shop owned and operated by the said Sammons, at 733 Twelfth Street NW., in the city of
401 Washington, is identical with and the same as that of Shade Shop, owned and operated by the respondent, at the southeast corner of said Twelfth & H Streets NW.

Paragraph five. That within the four years last past representatives and employees of apartment houses and hotels in the city of Washington, District of Columbia, who have been instructed by their employers to go to The Shade Shop, meaning thereby the store conducted by the said Sammons and purchase window shades, have been confused by the sign Shade Shop upon the respondent's store and upon inquiring of respondent's clerks if their employers purchased window shades at this store have been told and led to believe by such clerks that they did, when in truth and in fact, such employers dealt with the said Sammons; that such statements were false and misleading and were calculated and designed to and did cause such representatives of apartments and hotels to purchase window shades from the respondent, thereby diverting such sales from the said Sammons.

Now, therefore, notice is hereby given you, the said Alfred Klesner, doing business under the trade name and style of Shade Shop, Hooper & Klesner, that the charges of this complaint will be heard by the Federal Trade Commission at its office in the city of Washington, D. C., on the 18th day of February, A. D. 1921, at 10:30 o'clock in the forenoon of that day or as soon thereafter as the same may be reached, at which time and place you shall have the right to appear and show cause why an order should not be entered by the Federal Trade Commission requiring you to cease and desist from the violations of laws charged in this complaint.

You will further take notice that within thirty (30) days after the service of this complaint, you are required to file with the commission an answer in conformity with Rule III of the Rules of Practice of the commission.

In witness whereof, the Federal Trade Commission has caused this complaint to be issued, signed by its Secretary and its offiicial seal to be affixed hereto, at the city of Washington, D. C., on this 18th day of December, A. D. 1920.

By the commission.

[SEAL.] (Signed) J. P. YODER,
Secretary.

Before the Federal Trade Commission

FEDERAL TRADE COMMISSION, COMPLAINANT v. ALFRED KLESNER, TRADING AS HOOPER & KLESNER, defendant	Docket No. 696

ANSWER OF DEFENDANT

Comes now the defendant Alfred Klesner, trading as Hooper & Klesner, and for answer to the complainant filed herein says:

1. As to the allegations of this paragraph defendant says that he admits the substance of this paragraph with the exception of such allegations as might be construed to mean that the de-
402 fendant is engaged in selling wall papers and window shades only, and trades under the firm name and style of Shade Shop Hooper & Klesner. Defendant trades as Hooper & Klesner, and is engaged in the paper-hanging, painting, decorating, and window-shade business, and all stationery, signs on windows, automobiles, or advertising matter having reference to the words Shade Shop, merely indicates and describes, as does paper hanging, painting, etc., describe, the kind of business conducted by said firm.

Answering this paragraph defendant denies that W. Stokes Sammons has continuously carried on and conducted since the year 1907, a business of manufacturing and selling window shades under the firm name and style of The Shade Shop, and says that the said Sammons not only abandoned such name but used and was connected with another firm engaged in said business. Defendant further denies that said Sammons has during said period alleged held himself out to the general public by advertisements, letterheads, city and telephone directories, as The Shade Shop, but on the contrary the said Sammons has been employed to perform similar services for other firms, so this defendant is informed and proposes to establish.

3. Defendant admits that he and one Harry Hooper, then trading as Hooper & Klesner, in the business of paper hanging, painting, decorating, and window shades, did lease at the instance of said Sammons and after he was not successful in leasing the premises himself the premises situate at Twelfth and H Streets NW., upon and with the understanding with said Sammons that he would lease and pay one-half of the rental for use of part of said storeroom. Defendant denies that he nor the said Hooper were then or had theretofore been engaged in selling window shades, but on the contrary both the defendant and said Hooper had been engaged in selling shades since the year 1910, and the said Hooper, whose business was absorbed by the aforesaid partnership, had been engaged in the window-shade business several years prior to the year 1910, and the said firm of Hooper & Klesner had purchased of the said

Sammons and had ordered him to manufacture numerous window shades when he the said Sammons was located at 724 Eleventh Street NW. for customers and trade of said Hooper & Klesner, and prior to May, 1914, when said Sammons came with the firm of Hooper & Klesner, the said firm had built up and established a substantial and profitable window-shade business, and this the said Sammons well knew at the time he associated himself in the same building with the said firm, and during all the time that Sammons was so associated with the firm of Hooper & Klesner at the Twelfth and H Street address the said Sammons continued to furnish to the said firm window shades to fill the orders and trade of the said firm, and it was not the intention of the said firm nor the understanding with said Sammons that said firm would abandon and discontinue the window-shade business by reason of his association in the same storeroom. Defendant admits that said Sammons had, as was agreed, the name The Shade Shop displayed upon the windows of said Twelfth and H Street property.

4. Defendant denies that he refused said Sammons permission to remove the sign "The Shade Shop" from the show windows at Twelfth and H Streets NW., and says that the true facts are
408 that the said Sammons not only breached his lease with the said firm of Hooper & Klesner but conducted himself in a manner so unbecoming a gentleman that he was refused permission to enter upon the premises of the said firm of Hooper & Klesner, and defendant denies that he erased and removed the word *the* from said signs, but on the contrary the said Sammons after he had vacated said premises, without their permission, knowledge, and consent, forcibly broke and entered into the said premises and erased the word *the* himself from said signs, and otherwise mutilated the windows and floors thereof, necessitating a refinishing and painting. Defendant denies that he did then proceed to engage in the business of manufacturing and selling window shades but says that he resumed and continued the same under the firm name and style of Hooper & Klesner. Defendant denies that he has caused the Telephone Company to publish Shade Shop under his number in the directory, and any arrangement as to name in business which might appear in said telephone directory is that adopted and published by the telephone company, and with the exception of the last directory published there has always appeared in said directory sufficient information to apprise anyone using the directory that the one place was conducted by the said Sammons and the other by the said Hooper & Klesner. Defendant expressly denies that he has appropriated the name of The Shade Shop or has done anything with the purpose and intent of confusing the trade and general public and to cause customers and prospective customers of said Sammons to trade and deal with him in the belief that they were trading and dealing with said Sammons or to mislead or deceive the trade and

Before the Federal Trade Commission

FEDERAL TRADE COMMISSION, COMPLAINANT
v.
ALFRED KLESNER, TRADING AS HOOPER & KLESNER, defendant
} Docket No. 696

ANSWER OF DEFENDANT

Comes now the defendant Alfred Klesner, trading as Hooper & Klesner, and for answer to the complainant filed herein says:

1. As to the allegations of this paragraph defendant says that he admits the substance of this paragraph with the exception of such allegations as might be construed to mean that the de-
402 fendant is engaged in selling wall papers and window shades only, and trades under the firm name and style of Shade Shop Hooper & Klesner. Defendant trades as Hooper & Klesner, and is engaged in the paper-hanging, painting, decorating, and window-shade business, and all stationery, signs on windows, automobiles, or advertising matter having reference to the words Shade Shop, merely indicates and describes, as does paper hanging, painting, etc., describe, the kind of business conducted by said firm.

Answering this paragraph defendant denies that W. Stokes Sammons has continuously carried on and conducted since the year 1907, a business of manufacturing and selling window shades under the firm name and style of The Shade Shop, and says that the said Sammons not only abandoned such name but used and was connected with another firm engaged in said business. Defendant further denies that said Sammons has during said period alleged held himself out to the general public by advertisements, letterheads, city and telephone directories, as The Shade Shop, but on the contrary the said Sammons has been employed to perform similar services for other firms, so this defendant is informed and proposes to establish.

3. Defendant admits that he and one Harry Hooper, then trading as Hooper & Klesner, in the business of paper hanging, painting, decorating, and window shades, did lease at the instance of said Sammons and after he was not successful in leasing the premises himself the premises situate at Twelfth and H Streets NW., upon and with the understanding with said Sammons that he would lease and pay one-half of the rental for use of part of said storeroom. Defendant denies that he nor the said Hooper were then or had theretofore been engaged in selling window shades, but on the contrary both the defendant and said Hooper had been engaged in selling shades since the year 1910, and the said Hooper, whose business was absorbed by the aforesaid partnership, had been engaged in the window-shade business several years prior to the year 1910, and the said firm of Hooper & Klesner had purchased of the said

Sammons and had ordered him to manufacture numerous window shades when he the said Sammons was located at 724 Eleventh Street NW. for customers and trade of said Hooper & Klesner, and prior to May, 1914, when said Sammons came with the firm of Hooper & Klesner, the said firm had built up and established a substantial and profitable window-shade business, and this the said Sammons well knew at the time he associated himself in the same building with the said firm, and during all the time that Sammons was so associated with the firm of Hooper & Klesner at the Twelfth and H Street address the said Sammons continued to furnish to the said firm window shades to fill the orders and trade of the said firm, and it was not the intention of the said firm nor the understanding with said Sammons that said firm would abandon and discontinue the window-shade business by reason of his association in the same storeroom. Defendant admits that said Sammons had, as was agreed, the name The Shade Shop displayed upon the windows of said Twelfth and H Street property.

4. Defendant denies that he refused said Sammons permission to remove the sign "The Shade Shop" from the show windows at Twelfth and H Streets NW., and says that the true facts are
403 that the said Sammons not only breached his lease with the said firm of Hooper & Klesner but conducted himself in a manner so unbecoming a gentleman that he was refused permission to enter upon the premises of the said firm of Hooper & Klesner, and defendant denies that he erased and removed the word *the* from said signs, but on the contrary the said Sammons after he had vacated said premises, without their permission, knowledge, and consent, forcibly broke and entered into the said premises and erased the word *the* himself from said signs, and otherwise mutilated the windows and floors thereof, necessitating a refinishing and painting. Defendant denies that he did then proceed to engage in the business of manufacturing and selling window shades but says that he resumed and continued the same under the firm name and style of Hooper & Klesner. Defendant denies that he has caused the Telephone Company to publish Shade Shop under his number in the directory, and any arrangement as to name in business which might appear in said telephone directory is that adopted and published by the telephone company, and with the exception of the last directory published there has always appeared in said directory sufficient information to apprise anyone using the directory that the one place was conducted by the said Sammons and the other by the said Hooper & Klesner. Defendant expressly denies that he has appropriated the name of The Shade Shop or has done anything with the purpose and intent of confusing the trade and general public and to cause customers and prospective customers of said Sammons to trade and deal with him in the belief that they were trading and dealing with said Sammons or to mislead or deceive the trade and

general public into the erroneous belief that their place of business was the same as that of The Shade Shop.

5. Defendant says in answer to this paragraph that he has no knowledge of any representative or employee of apartment houses or hotels in this city being confused by his signs in his place of business with that of The Shade Shop, and he specifically denies on information and belief that his clerks ever advised any such persons or persons that their employers had purchased and were customers of Hooper & Klesner, unless such was the case. Defendant further says that he has specifically instructed his employees in answering inquiries over the telephone or by persons calling to inform that this is Hooper & Klesner's Shade Shop and inform them that The Shade Shop was another place of business.

Defendant further says in answer to the whole of this complaint and this paragraph in particular that the said Sammons has not acted toward the defendant and his business with the same degree of good faith as has the defendant toward the said Sammons. That when the said Sammons left premises at Twelfth and H Streets, he opened a place of business about three doors below defendants at the address given in the complaint and there opened up and engaged in for the first time in his career, a wall paper and decorating business and did there conduct said business until such time as he concluded it a futule effort to attempt to disrupt defendant's business; that the said Sammons resorted to unfair practices and methods of competition by soliciting by mail and otherwise and did quote the customers and trade of the firm of Hooper & Klesner prices, for the same line of work which he, the said Sammons, had performed for such
404 customers through the said firm of Hooper & Klesner at such low figures as to appear so ridiculous to said customers that some of them forwarded Sammons' proposals to them, the said Hooper & Klesner, which prices were unfair as being below cost and were designedly made for the purposes of taking customers and trade from the said Hooper & Klesner.

Defendant further says that this complaint should not be maintained for the reason that about the time or shortly thereafter, that said Sammons established himself at 733 Twelfth Street NW., he filed in the Supreme Court of the District of Columbia, a bill in equity in which he made this defendant and Harry S. Hooper, trading as Hooper & Klesner, defendants, and in which he sought practically the same relief as is sought in this complaint, and after the court heard the facts, his bill of complaint was dismissed and relief was denied. Defendant respectfully submits, therefore, that the facts herein have been adjudicated and that this action or complaint should not be maintained and prosecuted.

And having fully answered your defendant asks that he be dismissed with his reasonable costs.

(Signed) ALFRED KLESNER.

FEDERAL TRADE COMMISSION

Washington, D. C.

I, Otis B. Johnson, secretary of the Federal Trade Commission, being charged with the custody of the official files thereof, do hereby certify that the annexed is a full, true, and complete copy of:

Findings as to the facts and conclusion, and order to cease and desist in Docket 696, Federal Trade Commission v. Alfred Klesner, doing business under the name and style of Shade Shop, Hooper & Klesner, entered June 23, 1922.

In testimony whereof I hereunto subscribe my name and affix the seal of the said Federal Trade Commission at my office in the city of Washington, D. C., this 12th day of May, A. D. 1924.

[SEAL.] OTIS B. JOHNSON,
Secretary.

UNITED STATES OF AMERICA,
Before Federal Trade Commission, ss:

At a regular session of the Federal Trade Commission, held at its office in the city of Washington, D. C., on the 23rd day of June, A. D. 1922.

Present: Nelson B. Gaskill, chairman; Victor Murdock, John F. Nugent, Huston Thompson, commissioners.

FEDERAL TRADE COMMISSION v. ALFRED KLESNER, DOING BUSINESS UNDER THE Name and Style of Shade Shop, Hooper & Klesner	Docket No. 696.

Findings as to the facts and conclusion

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the
405 Federal Trade Commission issued and served a complaint upon the respondent, Alfred Klesner, trading under the name and style of Shade Shop, Hooper & Klesner, charging him with the use of unfair methods of competition in commerce, in violation of the provisions of said act. The respondent, Alfred Klesner, trading as Hooper & Klesner, entered his appearance by his attorney, Clarence R. Ahalt, and having filed his answer herein, hearings were had and evidence was thereupon introduced in support of his answer before an examiner of the Federal Trade Commission theretofore duly appointed, and thereupon this proceeding came on for final hearing, and the commission, having heard argument of counsel and having duly considered the record, and being now fully advised in the premises, makes this its findings as to the facts and conclusion:

FINDINGS AS TO FACTS

Paragraph one. That the respondent, Alfred Klesner, doing business under the trade name and style of "Shade Shop—Hooper &

Klesner," is a resident of the city of Washington, District of Columbia, with his office and principal place of business located at No. 929 H Street NW., in said city of Washington, engaged in the business of selling wall paper and window shades and doing painting and decorating work throughout the District of Columbia, in direct competition with other persons, firms, and corporations similarly engaged.

Paragraph two. That W. Stokes Sammons is a resident of the city of Washington, District of Columbia, and engaged exclusively, since 1901, in the business of manufacturing and selling window shades throughout the said District of Columbia and in near-by towns in States adjoining said District, under the trade name and style of "The Shade Shop," which trade name was adopted and used by him in the year 1901, since which time he has continuously carried on and conducted his said business under said trade name, and is now so carrying on and conducting his said business, and is now and has been during all of this period the sole and only person, firm, or corporation in the District of Columbia dealing in window shades under the trade name of The Shade Shop.

Paragraph three. That during the period above mentioned, the said Sammons operated stores for the manufacture and sale of window shades under the said trade name of "The Shade Shop," at the following locations in the said city of Washington, District of Columbia, to wit:

1901–1902, 910 E Street NW.
1903, 1649 K Street NW.
1904, 1403 New York Avenue NW.
1905–1907, 813 Fourteenth Street NW.
1907–1909, 2222 H Street NW.
1909–1910, 813 Fourteenth Street NW.
1910–1912, 724 Eleventh Street NW.
1912–1914, 819 Fifteenth Street NW.
1914–1915, Southeast corner Twelfth and H Streets NW.
1915–1920, 733 Twelfth Street NW.
1920–1921, 820 Thirteenth Street NW.

406 Paragraph four. That during all of said period, since the year 1901 to the present time, the said W. Stokes Sammons, in conducting his said business, has held himself out to the trade and to the public generally as "The Shade Shop," by advertisements placed in the leading newspapers published and circulated in the District of Columbia, in the Evening Star, the Washington Post, Knights of Columbus Bulletin, Trade Unionist, in the telephone directory of the said District, and by his letterheads, billheads, and by means of signs prominently displayed on the windows of his several places of business, and on his delivery wagons; and his business as a manufacturer and dealer in window shades under such trade name has become established and is well known to dealers in and purchasers of window shades, and to the general public in and

throughout the District of Columbia, and in towns of the States of Maryland and Virginia adjacent thereto, and the trade name, "The Shade Shop," through these twenty-one years of usage, has come to mean and does mean and signify to the window shade buying public, the shade business owned and operated by the said W. Stokes Sammons.

Paragraph five. That during the month of May, 1914, the respondent, Alfred Klesner, together with his then partner, one Harry Hooper, leased a certain storeroom and premises at the southeast corner of Twelfth and H Streets NW., in the city of Washington, D. C.; and thereafter, to wit, on the 14th day of May, 1914, the said Hooper and the said Klesner entered into a written lease with said W. Stokes Sammons, by the terms and conditions of which they sublet one-half of the storeroom and one-half of the cellar upon said premises to W. Stokes Sammons, trading as "The Shade Shop," for a period of two years, at the monthly rental of $41.66; that under and by the terms and provisions of this lease, the said Sammons was to have the right to carry on and conduct his said business in and upon the said premises and to place his signs upon the windows of the storeroom; and the said Sammons did, thereafter, establish his shade business in one-half of the storeroom, and placed his sign, "The Shade Shop," upon the windows of the storeroom facing both Twelfth and H Streets. And it was further agreed by and between the respondent and his then partner, Hooper, and the said Sammons, that all of the shade business which might come to this storeroom at the southeast corner of Twelfth and H Streets, was to belong to the said Sammons; that at this time, respondent, Alfred Klesner, was not and never had been engaged in the business of manufacturing or dealing in window shades, other than receiving occasional orders given to his employees engaged in wall papering and decorating work, which orders were turned over to the said W. Stokes Sammons, or some other shade dealer who filled the orders and gave the respondent his commission, or, as he termed it, his "rake-off."

Paragraph six. That under the aforesaid arrangement the respondent, Alfred Klesner, and his then partner, Harry Hooper, continued to carry on their business of decorating and paper hanging in one-half of the said storeroom, and W. Stokes Sammons continued to carry on his shade business under the trade name of "The Shade Shop" in the other half of the premises until November, 1915, when the business of the said Sammons had increased until his
407 annual gross sales amounted to over $60,000 and he deemed it necessary and advisable to have a storeroom of his own; whereupon he notified the respondent, Alfred Klesner, that he had leased the storeroom on the premises at 733 Twelfth Street NW., in the city of Washington, D. C., and that he would, in the near future, remove his business to said premises; thereafter, to wit, on the morning of the last Sunday in November, 1915, the said Sammons, in

company with one of his employees, went to the said storeroom at the southeast corner of Twelfth and H Streets NW., for the purpose of removing his goods and chattels to his new location. That Sammons had paid to the respondent his rent for the month of November, 1915, which was due and owing under the terms and provisions of the aforesaid lease, and in so entering upon the premises on the morning in question Sammons was not in any way a trespasser. The respondent, Alfred Klesner, was in the storeroom at the time and made no objection whatsoever to Sammons or his employee removing the goods and chattels of Sammons, until they started to remove from the windows of the storeroom the sign "The Shade Shop;" whereupon the respondent, Alfred Klesner, walked to the front of the store, drew a deadly weapon, to wit a revolver, upon Sammons and his employee and ordered them to cease removing the signs from the store windows; whereupon Sammons withdrew from the premises and called a policeman, who placed the respondent, Klesner, under arrest and took him to the police station, after which Sammons and his employee continued to remove and efface his signs from the windows of the storeroom, and removed all his goods and shattels to his new storeroom, where he continued to conduct and operate his business under the trade name "The Shade Shop." That the respondent, Alfred Klesner, did not at this time make, nor had he at any time prior thereto made, any claim or demand of any kind or character whatsoever upon the said Sammons for and on account of any alleged failure on the part of the said Sammons to continue to occupy this storeroom at the corner of Twelfth and H Streets, as a subtenant, and to pay the monthly rental as provided in the said lease for the remainder of the term thereof.

Paragraph seven. That respondent, Alfred Klesner, incensed and angered at Sammons because of his arrest and the circumstances connected with the removal of Sammons's sign as aforesaid, has refused to speak to Sammons since said trouble in the storeroom above referred to, and has during all this period continued this attitude of hatred and malice towards Sammons, so that immediately after Sammons had removed his business, as aforesaid, respondent, Klesner, conferred with his then partner, Harry Hooper, and it was decided that they would immediately enter upon the business of dealing in window shades, and that they would go after and get the window-shade business and trade which has been built up on this corner and in this storeroom by the said W. Stokes Sammons, trading under the name of "The Shade Shop;" and in pursuance of this plan and policy and with the further purpose of injuring the said W. Stokes Sammons, the respondent and his said partner placed upon the two windows of their storeroom the sign "Shade Shop," using the same size, style, and color of lettering, and in the same
408 place as that of the sign "The Shade Shop," used theretofore by the said Sammons; and in furtherance of this plan they also placed upon their letterheads and billheads the words "Shade Shop," and caused the Chesapeake & Potomac Telephone Company,

operating in the said District of Columbia, to have them listed in its telephone directory under the name and style of "Shade Shop, Hooper & Klesner," and respondent has carried and is now carrying an advertisement in said telephone directory in which he advertises and holds himself out to the trade and the general public as "Shade Shop, Hooper & Klesner," and respondent is now suffering and permitting said telephone company to list his business in its telephone directories under the trade name, "Shade Shop;" and respondent also placed upon his delivery trucks the sign, "Shade Shop, Hooper & Klesner." That the said Sammons continued to operate and conduct his business at 733 Twelfth Street until the year 1920, when he removed to his present location at 820 Thirteenth Street NW., in the city of Washington, D. C., and the respondent, Alfred Klesner, continued to operate his business at the said southeast corner of Twelfth and H Streets until some time in the early part of the year 1921, and there has been considerable confusion in the trade, and customers who have known or heard of "The Shade Shop," as conducted and carried on by the said Sammons, and who desired to purchase window shades therefrom, have been confused and deceived by the sign "Shade Shop," used as aforesaid by the respondent, and have gone to the storeroom of the respondent and there purchased window shades of him in the mistaken belief that they were dealing with the said W. Stokes Sammons; and that on certain occasions, when customers had entered respondent's store and made specific inquiries as to whether this was the storeroom operated by the said Sammons, they were deceived by the employees of the respondent and were led to believe that it was the storeroom and the location and place of business of the said M. Stokes Sammons, when, in truth and in fact, the said Sammons was operating and conducting his business under the name of "The Shade Shop," at 733 Twelfth Street, NW., as aforesaid. That the use of the term "Shade Shop" by the respondent in the listing and advertising sections of the telephone directory has caused and is causing similar confusion to the window shade purchasing public throughout the District of Columbia, and the respondent, Alfred Klesner, is now carrying such paid advertisement in the said telephone directory, and suffering and permitting the said telephone company to list his business under the trade name of "Shade Shop" out of spite to said Sammons, with the purpose and intent to injure his said competitor in his window-shade business.

CONCLUSION

That the methods of competition set forth in the foregoing findings as to the facts, and each and all thereof, under the circumstances therein set forth, constitute unfair methods of competition in commerce in the District of Columbia, in violation of the provisions of section 5 of the Federal Trade Commission Act, approved

September 26, 1914, entitled "An act to create a Federal
409 Trade Commission, to define its powers and duties, and for other purposes."

By direction of the commission:

[SEAL.] (Signed) NELSON B. GASKILL,
Chairman.

[SEAL.]
Dated this 23d day of June, A. D. 1922.
Attest:
(Signed) J. P. YODER, *Secretary.*

UNITED STATES OF AMERICA,
Before Federal Trade Commission, ss:

At a regular session of the Federal Trade Commission held at its office in the city of Washington, D. C., on the 23d day of June, A. D. 1922.

Present: Nelson B. Gaskill, chairman; Victor Murdock, John F. Nugent, Huston Thompson, commissioners.

FEDERAL TRADE COMMISSION
v.
ALFRED KLESNER, DOING BUSINESS UNDER THE NAME and Style of "Shade Shop, Hooper & Klesner" } Docket No. 696.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the pleadings and the testimony and evidence received by an examiner duly appointed by the commission, and the arguments of counsel for the respondent and for the commission, and the commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of an act of Congress approved September 26, 1914, entitled, "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," which said report is hereby referred to and made a part hereof: Now, therefore,

It is ordered, That the respondent, Alfred Klesner, his servants, agents, and employees cease and desist from using the words "Shade Shop" standing alone or in conjunction with other words as an identification of the business conducted by him, in any manner of advertisement, signs, stationery, telephone or business directories, trade lists, or otherwise.

It is further ordered, That the respondent, Alfred Klesner, within thirty days from the date of service of this order upon him file with the commission a report, setting forth in detail the manner and form in which he has complied with the order of the commission herein set forth.

By the commission:

[SEAL.] (Signed) J. P. YODER,
Secretary.

(Indorsement:) Orig. No. 976. In the Court of Appeals for the District of Columbia. Original Docket Number 976. Federal Trade Commission, petitioner, versus Alfred Klesner, doing 410 business under the name of "Shade Shop," etc., respondent. Application and supporting affidavits for a preliminary mandatory injunction and for enforcement of the commission's order. [In pencil: Rule to issue in 10 days.] Wm. H. Fuller, chief counsel; Adrian F. Busick and Charles Melvin Neff, attorneys for the petitioner, the Federal Trade Commission. Service of a copy of the within is hereby admitted this day of May, 1924.

Stamped: [Court of Appeals, District of Columbia. Filed May 13, 1924. Henry W. Hodges, clerk.]

In the Court of Appeals for the District of Columbia

FEDERAL TRADE COMMISSION, PETITIONER
v.
ALFRED KLESNER, TRADING AS HOOPER & Klesner, respondent
} Original Docket No. 976

Answer

Filed Aug. 7, 1924

Comes now Alfred Klesner, trading as Hooper & Klesner, and for answer to the petition filed herein at the April, 1924, Term thereof, by the Federal Trade Commission, praying a preliminary injunction pending appeal to enforce the commission's order, says:

1. The commission's finding of fact is not, as disclosed by the record, supported by a fair preponderance of the evidence; and the order of the commission being rounded and predicated upon such erroneous finding, the commission is not entitled to the relief prayed.

2. The commission erred in ignoring respondent's exceptions to the proposed findings of fact and conclusions by the examiner on behalf of the Federal Trade Commission; also in ignoring the respondent's additional findings of fact, and refusing to incorporate the same in its final findings and conclusion.

3. That the commission and its examiners committed various and sundry errors, as will appear in the record, in the admission of evidence over objection of respondent, and in the exclusion of evidence offered by respondent.

4. That the record in this cause does not disclose that respondent has been guilty of methods of unfair competition within the meaning of the law.

5. That the record does not disclose acts and practices by the respondent which constitute, under the law, grounds upon which to predicate the order entered by the commission in this cause.

6. That the words "Shade Shop" are not susceptible of appropriation as a trade name by one to the exclusion of others.

7. That the record does not disclose any attempt on the part of respondent to palm off his goods for goods of others similarly engaged.

8. The record here fails to disclose any such confusion of the purchasing public as to bring this case within the purview of the Federal Trade Commission Act.

9. Neither the petition nor the record herein certified shows facts which, if true, warrant or justify the finding and order of the Commission herein or the relief prayed for by the commission.

411 And having fully answered respondent prays that he may be hence dismissed with his costs in this behalf incurred.

ALFRED KLESNER.

C. R. AHALT,
H. S. BARGER,
Attys.

[File indorsement omitted.]

412–413 [Omitted.]

414 In Court of Appeals of the District of Columbia, April term, 1924

FEDERAL TRADE COMMISSION, PETITIONER vs. ALFRED KLESNER, DOING BUSINESS UNDER THE Name of Shade Shop, Hooper & Klesner, respondents	No. 976, original

Order to show cause

Filed May 20, 1924

The petitioner having filed in this court an application for the enforcement of an order made by it against the respondent, and having filed herein a transcript of the record pursuant to the statute,

It is ordered that notice be served upon the respondent of the filing of said application and transcript by serving upon him a copy of this order.

And it is further ordered, pursuant to petition filed herein, that cause be shown by Alfred Klesner, the respondent, within ten days after service upon him of a copy of this order and of the petition of the Federal Trade Commission filed herein May 13, 1924, why a preliminary injunction should not issue against him as prayed in said petition.

Per Mr. Justice ROBB,
Senior Associate Justice, Presiding.

MAY 20, 1924.

[File endorsements omitted.]

No. 976. Original

Return of service

Filed May 23, 1924

Copy of the within order and of the petition referred to therein served on Alfred Klesner personally 5/21/24.

E. C. SNYDER, *U. S. Marshal.*
R.

In Court of Appeals of the District of Columbia

[Title omitted.]

Motion to discharge rule to show cause

Filed May 31, 1924

Comes now, Alfred Klesner, trading as Hooper & Klesner, respondent in the above-entitled cause, by his attorneys, Clarence
415 R. Ahalt and Harry S. Barger, and moves the court to discharge the rule to show cause issued herein on, to-wit, May 20, 1924, and for grounds of said motion, says:

1. That said rule was improvidently issued, in this, that the court under the law is without jurisdiction to grant a preliminary injunction or to take any action whatsoever in advance of a hearing and determination of this cause upon its merits as disclosed by the complete record to be filed herein.

2. This court has no inherent jurisdiction or right in an original proceeding or otherwise to pass a preliminary order or injunction herein; and the court's sole jurisdiction arises from special statutory provisions.

3. It appears upon the face of the petition and record herein that no violation of law detrimental to the public has occurred or exists calling for injunctive measures.

4. And for other reasons appearing upon the face of the record.

C. R. AHALT,
H. S. BARGER,
Attorneys for Respondent.

W. H. FULLER, Esq.,
Chief Counsel, Federal Trade Commission.

Take notice that the above motion will be called to the attention of the court on Wednesday, June 4th, 1924, at 10 a. m. o'clock, or as soon as counsel can be heard.

C. R. AHALT,
H. S. BARGER,
Attorneys for Respondent.

Service of the foregoing motion acknowledged this 31st day of May, 1924.

[File endorsement omitted.] W. H. FULLER.

In Court of Appeals of District of Columbia

[Title omitted.]

Order postponing motion to discharge rule

June 7, 1924

On consideration of the motion to discharge the rule to show cause issued herein it is ordered that said motion be, and the same is hereby, postponed until the hearing of the case.

In Court of Appeals of District of Columbia

[Title omitted.]

Order refiling of answer and briefs

On motion it is ordered that the respondent in the above-entitled cause be, and he is hereby, allowed sixty days to file an answer
416 to the petition; that the petitioner be allowed thirty days thereafter to file brief and the respondent thirty days thereafter to file his brief.

* * * * * * *

(Clerk's note: Answer filed Aug. 7, 1924. See page 410.)

In Court of Appeals of District of Columbia

[Title omitted.]

Argument and submission

Nov. 5, 1924

The argument in the above-entitled cause was commenced by Mr. Charles M. Neff, attorney for the petitioner, and was continued by Mr. C. R. Ahalt, attorney for the respondent, and by Mr. Charles M. Neff, attorney for the petitioner, and was concluded by Mr. A. F. Busick, attorney for the respondent.

On motion the respondent is allowed to file additional authorities, with leave to the petitioner to reply if so advised.

* * * * * * *

In Court of Appeals of the District of Columbia

FEDERAL TRADE COMMISSION, PETITIONER vs. ALFRED KLESNER, DOING BUSINESS UNDER THE Name of "Shade Shop," etc., respondent	No. 976

Opinion

Before MARTIN, Chief Justice; VAN ORSDEL, Associate Justice, and BARBER, Judge, U. S. Court of Customs Appeals.

VAN ORSDELL, Associate Justice. This is an original proceeding brought in this court by the Federal Trade Commission, hereafter

referred to as "the commission," under the provisions of the Federal Trade Commission act, 38 Stats. 717, to compel the enforcement of an order issued by the commission against the respondent, Alfred Klesner, requiring him to cease and desist from using the word "Shade Shop," standing alone or in conjunction with other words, as an identification of the business conducted by him; and forbidding its use on advertisements, signs, stationary, telephone and business directories, trade lists, or otherwise, in connection with the conduct of his business in the District of Columbia.

It appears that the commission directed an investigation to be made of respondent's use of the sign "Shade Shop" in connection with the conduct of his business in this district, and, as a result of the investigation, issued the above order requiring him to discontinue its use; and to report to the commission within 30 days
417 from the date of the service of the order, setting forth in detail the manner and form in which he had complied with the order. Upon failure of the respondent in this court to compel respondent's compliance with the finding and order of the commission.

At the outset, we are confronted by a question of jurisdiction. Section 4 of the act, defining the jurisdiction of the commission, among other things, provides as follows: "'Commerce' means commerce among the several States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or between any such Territory and another, or between such Territory and any State or foreign nation, or between the District of Columbia and any State or Territory and foreign nation."

Section 5 of the act, defining the method of procedure to be invoked by the commission in making its investigations and enforcing its orders, among other things, provides: "If such person, partnership, or corporation fails or neglects to obey such order of the commission while the same is in effect, the commission may apply to the Circuit Court of Appeals of the United States, within any circuit where the method of competition in question was used or where such person, partnership, or corporation resides or carries on business, for the enforcement of its order, and shall certify and file with its application a transcript of the entire record in the proceedings, including all the testimony taken and the report and order of the commission."

There is nothing in the act specifically providing that the commission, to enforce an order within the District of Columbia, may bring an action in the Court of Appeals of the District; nor will the fact that the District of Columbia is specifically embraced by Congress within the territorial jurisdiction of the commission justify the implication that its orders may be enforced in the Court of Appeals of the District. This logically suggests the inquiry whether or not the term "Circuit Court of Appeals of the United States" embraces by implication the Court of Appeals of the District of Columbia; and, if not, whether the Court of Appeals of the District has jurisdiction to proceed in this case.

The Supreme Court of the District of Columbia has the jurisdiction conferred upon it by Congress of a District Court of the United States, over Federal matters arising within the District, and strictly coming within the jurisdiction of the Federal courts. The Court of Appeals likewise possesses in such cases similar appellate jurisdiction to that conferred upon a Circuit Court of Appeals of the United States in cases appealed to it from a District Court of the United States. Yet it is quite apparent that neither from the selection of names nor from the objects to be attained in the creation of the respective courts can any implication arise which would justify the application of the term District Court of the United States to the Supreme Court of the District of Columbia, or Circuit Court of Appeals of the United States to the Court of Appeals of the District of Columbia.

418 Nor can any such interchange of designation be sustained from an examination of the legislation bringing these courts into existence. The entire territory of the United States, except the District of Columbia, was by Congress divided into nine judicial circuits, and a Circuit Court of Appeals created for each circuit. In the creation of inferior courts of the United States, Congress is limited only by the Constitution, which places no restriction on its power to establish judicial boundaries. Congress might have created but one Circuit Court of Appeals and conferred upon it jurisdiction coextensive with the United States, or a Circuit Court, limited in jurisdiction, for example, to a single State, or it might have created one or more such courts in each State; but it divided all the territory of the United States, excepting the District of Columbia, into nine judicial circuits, each composed, for convenience, of contiguous States and Territories.

Congress, therefore, in this creation of circuits, might have made a tenth circuit composed of the District of Columbia and created a Circuit Court of Appeals for it, but this was not done. Owing to the peculiar constitutional organization of the District of Columbia, and the dual legislative authority, both State and Federal, conferred by the Constitution upon Congress in legislating for the District, Congress created courts for the District, conferring thereon this dual jurisdiction, with distinctive names, possessing like Federal jurisdiction to the Circuit and District Courts of the United States, but separate and distinct in legislative origin, designation, and general jurdisdiction.

The jurisdiction of the courts of the District of Columbia was recently defined in the case of Public Utilities Commission of the District of Columbia v. Potomac Electric Power Co. et al., 261 U. S. 428, 442, as follows: "By the Constitution, clause 17, section 8, article 1, Congress is given power 'To exercise exclusive legislation in all cases whatsoever, over' the District of Columbia. This means that as to the District Congress possesses not only the power which belongs to it in respect of territory within a State but the

power of the State as well. In other words, it possesses a dual authority over the District and may clothe the courts of the District not only with the jurisdiction and powers of Federal courts in the several States but with such authority as a State may confer on her courts."

While the Federal Trade Commission is undoubtedly given jurisdiction by the terms of the act over cases arising in the District of Columbia, Congress, through an apparent oversight, has failed to provide a court within the District in which the Commission can enforce its orders. This omission in the act can be remedied by Congress if it is found desirable.

It is accordingly adjudged, ordered, and decreed that the petition of the Federal Trade Commission, petitioner herein, be, and the same is hereby, dismissed.

419 In Court of Appeals of District of Columbia

[Title Omitted.]

Decree

June 1, 1925

Petition of the Federal Trade Commission to compel the enforcement of an order of the commission.

This cause came on to be heard on the transcript of the record from the Federal Trade Commission, the petition of the commission for the enforcement of its order, the rule to show cause issued by this court upon the respondent, and the answer thereto, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged, and decreed by this court that said petition be, and the same is hereby, dismissed for the want of jurisdiction.

Per Mr. Justice VAN ORSDEL.

JUNE 1, 1925.

Judge Orion M. Barber of the U. S. Court of Customs Appeals sat in this case in the place of Mr. Justice Robb.

* * * * * * *

[Clerk's Certificate to foregoing transcript omitted in printing.]

420 In Court of Appeals of District of Columbia

[Title omitted.]

Order assigning cause for reargument

Oct. 14, 1927

It is ordered by the Court that the above-entitled cause be and the same is hereby assigned for reargument on the merits at the head of the special calendar for November next.

421 In Court of Appeals of District of Columbia

[Title omitted.]

Argument and submission

Nov. 9, 1927

The reargument in the above-entitled cause was commenced by Mr. R. P. Whiteley, attorney for the petitioner, and was continued by Mr. H. S. Barger, attorney for the respondent, and was concluded by Mr. R. P. Whiteley, attorney for the petitioner.

422 In Court of Appeals of District of Columbia

[Title omitted.]

Order assigning cause for reargument

Jan. 25, 1928

A rehearing of this case on brief and argument is ordered upon the single question of the authority of the Federal Trade Commission, under section 5 of the Federal Trade Commission Act, to take jurisdiction of the ordinary controversy arising from unfair competition between private individuals in the course of trade, or whether its jurisdiction is not restricted to cases involving such a monopolistic restraint and suppression of competition as to result in the infliction of a direct injury upon the public.

PER CURIAM.

JANUARY 25, 1928.

423 In Court of Appeals of District of Columbia

[Title omitted.]

Argument and submission

Mar. 5, 1928

The reargument in the above-entitled cause was commenced by Mr. Robert E. Healy, attorney for the petitioner, and was continued by Mr. H. L. Barger, attorney for the respondent, and was concluded by Mr. A. F. Busick, attorney for the petitioner.

424 In Court of Appeals of the District of Columbia

FEDERAL TRADE COMMISSION, PETITIONER,
vs.
ALFRED KLESNER, DOING BUSINESS UNDER the Name of "Shade Shop," etc. } No. 976 Original

Before Martin, Chief Justice; Robb and Van Orsdel, Associate Justices.

Opinion filed

April 2, 1928

Mr. Justice Van Orsdel delivered the opinion of the court.

VAN ORSDEL, Associate Justice: The Federal Trade Commission filed its petition in this court for an injunction to enforce an order of the commission against respondent Alfred Klesner, requiring him, his servants, agents, and employees, to "cease and desist from using the words 'Shade Shop,' standing alone or in conjunction with other words, as an identification of the business conducted by him, in any manner of advertisement; signs, stationary, telephone, or business directories, trade lists, or otherwise."

It appears that the commission, in December, 1920, on the complaint of one W. Stokes Sammons, issued a complaint against defendant charging him with unfair methods of competition in commerce under the Federal Trade Commission Act, 38 Stats. 717. To the complaint, defendant answered; and upon issue joined and evidence adduced the order here sought to be enforced was made by the commission. The complaint charged the defendant with using the word "Shade Shop" on a window at his place of business, on an automobile truck owned and operated by him, and in the telephone directory for the city of Washington, in such manner as to confuse, mislead, and deceive the general public into the erroneous belief that defendant's place of business was the place where a similar business was conducted by Sammons under the name of "The Shade Shop."

425 It appears that one H. S. Hooper, since the year 1904, was engaged in the decorating and window shade business, and that in 1909 the firm of Hooper & Klesner was formed, which succeeded to the business of Hooper. It further appears that in 1919 defendant purchased Hooper's interest in the business and has conducted it under the firm name of Hooper & Klesner; that he never did business under any other name; never stamped his shade goods with the name "The Shade Shop" or "Shade Shop"; that he has not used "Shade Shop" on his stationary, or in advertisements, or on signs or otherwise, except in conjunction with the firm name of Hooper & Klesner.

Considerable evidence was adduced showing the competitive character of the business between defendant and Sammons, and establishing some confusion in trade by customers going to defendant's shop when they were in fact intending to do business with Sammons. We think, however, that the case can be disposed of without an analysis of the testimony, since it clearly appears and is conceded that the use was limited, as charged in the complaint, to a sign or signs painted on his place of business, on an automobile used in connection with his business, and to a notice appearing in the classified business section of the telephone directory of the city of Washington. In each instance the name was used in connection with the firm name Hooper & Klesner.

This action is sought to be sustained under section 5 of the Federal Trade Commission act, which, among other things, provides "That unfair methods of competition in commerce are hereby declared unlawful. The commission is hereby empowered and directed to prevent persons, partnerships, or corporations, except banks and common carriers subject to the Acts to regulate commerce, from using unfair methods of competition in commerce. Whenever the commission shall have reason to believe that any such person, partnership, or corporation has been or is using any unfair
426 method of competition in commerce, and if it shall appear to the commission that a proceeding by it in respect thereof to be in the interest of the public, it shall issue and serve upon such person, partnership, or corporation a complaint stating its charges in that respect, and containing a notice of a hearing upon a day and at a place therein fixed at least thirty days after the service of said complaint."

The act then provides for the appearance of the party charged with unfair conduct, his right to be heard, and for the reduction of the testimony to writing, and the filing of a copy thereof in the office of the commission; and in the event that the commission finds that unfair methods have been employed, an order shall issue against the party charged, requiring him to "cease and desist from using such methods of competition."

In the present case it will be observed that the term "Shade Shop," as used by defendant, is merely descriptive of the trade or business conducted by the defendant, and is indicative of a place where window shades are made and sold. In other words, it is a generic name of a place where business of that sort is conducted. It is well settled that the exclusive use to such a name, either as a trade-mark or trade name, is not entitled to legal protection. In Delaware & Hudson Canal Company vs. Clark, 13 Wall. 311, the plaintiff had for many years adopted and used Lackawanna Coal as a trade name for his product, and he sought to restrain the defendant from applying the same name to coal produced in the same vicinity. Mr. Justice Strong, delivering the opinion of the Court, said: "There are two rules which are not to be overlooked. No one can claim protection

for the exclusive use of a trade-mark or trade name which would practically give him a monopoly in the sale of any goods other than those produced or made by himself. If he could, the public would be injured rather than protected, for competition would
427 be destroyed. Nor can a generic name, or, a name merely descriptive of an article of trade, of its qualities, or ingredients, or characteristics, be employed as a trade-mark and the exclusive use of it be entitled to legal protection." The court concludes its opinion with the significant observation that "if the plaintiff's sales are diminished, it is because they are not the only producers of Lackawanna Coal, and not because of any fraud of defendant."

While the rule here announced applies to a generic name descriptive of an article of trade, the rule is not different where the words, as in this case, are descriptive of the place where the goods are sold or produced. As was said in Brown Chemical Co. vs. Myer, 139 U. S. 54: "The general proposition is well established that words which are merely descriptive of the character, qualities, or composition of an article, or of the place where it is manufactured or produced, can not be monopolized as a trade-mark."

If the use here complained of was limited to the use of the words "Shade Shop" alone, the use could not be restrained, since it merely denotes the character of business conducted in the place where the sign appears. Its use is not different from that of signs commonly appearing upon the street, such as "Barber shop," "Candy shop," "Hardware store," "Jewelry store," etc. It is settled law that such words are incapable of exclusive appropriation as legal trade-marks or trade-names, since they are generic names descriptive in each instance of a place of business. There is a total absence of anything showing a use by defendant which would justify the charge of unfair competition, but on the contrary a use ordinarily employed by those engaged in his line of business. To sustain the finding of the Trade Commission would, therefore, in the language of the court in Trinidad Asphalt Manufacturing Co. vs. Standard Paint Co., 163 Fed. 977, 981, "be a result unsustained by reason or authority if one, after vainly attempting through a trade-mark to secure a monopoly of a generic or descriptive word, should nevertheless be granted one by decree of a court, applying the doctrine
428 of unfair competition to those who simply used the word in the appropriate naming or description of their goods, but in other respects plainly distinguished them from the goods of their competitor." Applying the reasoning of the court in that case, if the action of the commission should be sustained in this case, then none of the large number of manufacturers of window shades could lawfully designate their places of business by the term "Shade Shop."

Sammons had no monopoly of the window shade business; hence, in the absence of any showing that defendant was attempting to dispose of his goods under the pretense that they were the goods of Sammons, there is no ground whatever in law or reason for invoking

the doctrine of unfair competition, since defendant had the common right belonging to the trade to use the mark as descriptive of his business. "Having the right to that use, courts will not interfere where the only confusion, if any, results from a similarity of name and not from the manner of use. The essence of the wrong in unfair competition consists of the sale of goods of one manufacturer or vendor for those of another, and if defendant so conducts its business as not to palm off its goods for those of complainant, the action fails." Howe Scale vs. Wycoff et al., 198 U. S. 120, 140.

The record is silent as to any attempt on the part of defendant or his employees to deceive or entice Sammons' customers into dealing with him. On the contrary, his employees were instructed that when it appeared that customers were looking for Sammons to direct them to his place of business. Undoubtedly Sammons' business was affected by defendant's competition, as it was by other dealers in window shades, but that is not sufficient to justify equitable intervention. As said in the Clark case: "True it may be that the use by a second producer, in describing truthfully his product, of a name or a combination of words already in use by another, may have the
429 effect of causing the public to mistake as to the origin or ownership of the product, but if it is just as true in its application to his goods as to those of another who first applied it, and who therefore claims an exclusive right to use it, there is no legal or moral wrong done. Purchasers may be mistaken, but they are not deceived by false representations, and equity will not enjoin against telling the truth."

But the use made by defendant is even more restrictive, since it appears that the name was used invariably in connection with the firm name, Hooper & Klesner, which designated his place of business from other places using similar trade names. In the absence of trade-mark rights and any showing of fraud in business methods, this is the most that the courts have ever required. The name of the user in connection with the mark, when the word designates, as in this instance, a common line of business, is held sufficient to distinguish its use from others engaged in the same business and using the same trade name. Howe Scale Co. vs. Wycoff, et al., 198 U. S. 120; Waterman vs. Waterman, 235 U. S. 88; Elgin Watch Co. vs. Illinois Watch Co. 179 U. S. 664.

This rule as to distinguishing the place of business may be satisfied by other means than the addition of the proprietor's name. It may be accomplished by any means that will inform the public and distinguish the place of business from other users of the same or similar trade name. Weinstock, Lubin & Co. vs. Marks, 109 Cal. 529.

A question of the authority of the commission, under the statute, to assume jurisdiction of this case is suggested, since this is merely a controversy between private individuals, cognizable by a court of equity, and not a case involving any question of unlawful monopoly

or of interest to the public. Inasmuch, however, as we have disposed of the case on its merits, inquiry into the matter of jurisdiction is avoided.

The petition is dismissed with costs.

430 [File endorsement omitted.]

431 In Court of Appeals of District of Columbia

* * * * * * *

FEDERAL TRADE COMMISSION, PETITIONER,
vs.
ALFRED KLESNER, DOING BUSINESS UNDER the name of "Shade Shop," etc.
} No. 976 Original, April term 1928

Decree

April 2, 1928

Petition to enforce order of Federal Trade Commission. This cause came on to be heard on the petition of the Federal Trade Commission, rule to show cause, answer of the respondent, and a transcript of the record of the proceedings before the commission, and was argued by counsel. On consideration whereof, it is now here ordered, adjudged, and decreed by this court that the prayer for injunction be and the same is hereby denied, and that the petition of the commission to enforce the order in question be and the same is hereby dismissed with costs.

Per Mr. JUSTICE VAN ORSDEL.

April 2, 1928.

432 In Court of Appeals of District of Columbia.

[Title omitted.]

Præcipe for transcript of record

(Filed Aug. 3, 1928)

To the clerk of the Court of Appeals of the District of Columbia:

The petitioner in the above-entitled cause, being desirous of applying to the Supreme Court of the United States for a write of certiorari to review the judgment and decision of the court in this cause, hereby requests the clerk of the Court of Appeals of the District of Columbia to prepare, at petitioner's expense, a transcript of record to accompany the petition for write of certiorari, including therein the following:

1. Transcript of record.
2. Rule to show cause.

3. Return of service by U. S. marshal.
4. Motion to discharge rule to show cause.
5. Motion to discharge rule to show cause postponed until hearing of the case on the merits.
6. Order allowing respondent 60 days to file answer to petition, etc.
7. Argument.
8. Opinion of the court.
9. Order dismissing petition for want of jurisdiction.
10. Order assigning case for reargument.
11. Reargument.
12. Order directing reargument.
13. Reargument.
14. Opinion of the court.
15. Order dismissing petition.
16. This designation.

ADRIEN F. BUSICK
Assistant Chief Counsel, Federal Trade Commission.

433 [File indorsement omitted.]

434 [Clerk's certificate to foregoing transcript omitted in printing.]

[Indorsement on cover:] File No. 33672. District of Columbia, Court of Appeals. Term No. 363. Federal Trade Commission, petitioner, vs. Alfred Klesner, doing business under the name "Shade Shop," Hooper & Klesner. Petition for writ of certiorari and exhibit thereto. Filed August 15th, 1928. File No. 33672.

435 Supreme Court of the United States

Order allowing certiorari

Filed October 22, 1928

The petition herein for a writ of certiorari to the Court of Appeals of the District of Columbia is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

○

Office Supreme Court, U. S.
FILED
AUG 15 1928
CHARLES ELMORE CROPLEY
CLERK

FILE COPY

No. 3[redacted]8

In the Supreme Court of the United States

OCTOBER TERM, 1928

FEDERAL TRADE COMMISSION, PETITIONER

v.

ALFRED KLESNER, DOING BUSINESS UNDER THE NAME "SHADE SHOP," HOOPER & KLESNER, RESPONDENT

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA, AND BRIEF IN SUPPORT THEREOF

U. S. GOVERNMENT PRINTING OFFICE: 1928

TABLE OF CONTENTS

	Page
Petition for writ of certiorari to the Court of Appeals of the District of Columbia	1
A. The facts	1
Deception of the Public	10
B. Reasons relied on for the issuance of the writ	13
Prayer for relief	15
I. The opinion of the court below	15
II. Jurisdiction	15
III. Statement of the case	16
IV. Specification of errors	16
V. Argument	17
1. The term "unfair methods of competition," as used in the Federal Trade Commission Act, includes practices opposed to good morals because characterized by deception and fraud	17
2. Proceedings under Section 5 of the Federal Trade Commission Act for the prevention of unfair methods of competition are based upon the public interest	19
3. The owner of a trade name which is purely descriptive is entitled to protection from fraud and unfair dealing on the part of a competitor	26
4. The trade name "The Shade Shop" was not used by Sammons merely to indicate the character of business carried on by him	28
5. The Commission's findings of (*a*) intent on the part of respondent to appropriate the business of Sammons by deceiving the public; and (*b*) that the public was deceived by the respondent's use of the trade name "Shade Shop" into dealing with respondent, when they intended to deal with Sammons' "The Shade Shop," are supported by the evidence	30
6. If the Commission's findings are supported by testimony, they are by the statute made conclusive	33
7. The use by respondents of the partnership name "Hooper & Klesner" in juxtaposition with the trade name "Shade Shop" not sufficient to distinguish respondents' business from that of their competitor Sammons	35
VI. Conclusion	36

TABLE OF CASES CITED

	Page
American Clay Mfg. Co. v. *American Clay Mfg. Co.* (*N. J.*), 198 Pa. St. 189–191; 47 Atl. 936	26
American Grocery Publishing Assn. v. *The Grocery Publishing Co.*, 25 Hun. (N. Y.) 398	26
Army and Navy Cooperative Society v. *Army, Navy and Civil Service Cooperative Society of South Africa*, 19 R. P. C. 574–576	27
Borthwick v. *The Evening Post*, L. R. 37, Ch. D. 449	20
Cady v. *Schultz*, 19 R. I. 193, 32 Atl. 915	27
Chapin-Sacks Mfg. Co. v. *Hendler*, 254 Fed. 553, 556	20
Cole (G. W.) Co. v. *American Cement & Oil Co.*, 130 Fed. 703	20
Dunston v. *Los Angeles Van & Storage Co.*, 165 Cal. 89, 94; 131 Pac. 115	27
Federal Trade Commission v. *Beech-Nut Packing Co.*, 257 U. S. 441, 453	18
Federal Trade Commission v. *Curtis Publishing Co.*, 260 U. S. 568, 580, 583	33
Federal Trade Commission v. *Gratz et al.*, 253 U. S. 421	16, 17
Federal Trade Commission v. *Klesner*, 25 F. (2d) 524	15
Federal Trade Commission v. *Klesner*, 274 U. S. 145	16, 36
Federal Trade Commission v. *Raymond Bros.-Clark Co.*, 263 U. S. 565, 572	18
Federal Trade Commission v. *Sinclair Refining Co.*, 261 U. S. 463, 475	18
Federal Trade Commission v. *Winsted Hosiery Co.*, 258 U. S. 483, 493, 494	18
Fuller v. *Huff et al.*, 104 Fed. 141, 143–144	27
German-American Button Co., v. *Heymsfeld*, 156 N. Y. Supp. 223	27
Giragosian v. *Chutjian*, 194 Mass. 504; 80 N. E. 647	27
Hamilton Shoe Co. v. *Wolf Bros. & Co.*, 240 U. S. 251, 258	14
Howe Scale Co. v. *Wyckoff, Seamans & Benedict*, 198 U. S. 118, 140	19
Juvenile Shoe Co. v. *Federal Trade Commission*, 289 Fed. 57	13
Knott v. *Morgan*, 2 Keen 213	27
Koebel v. *Chicago Landlords' Protective Bureau*, 210 Ill. 176; 71 N. E. 362	27
Material Men's Mercantile Assn. v. *New York Material Men's Mercantile Association*, 155 N. Y. Supp. 706	27
Merchants' Detective Assn. v. *Detective Mercantile Agency*, 25 Ill. App. 250	27
McFall Electric & Telephone Co. v. *McFall Electric Co.*, 110 Ill. App. 182	27
Motor Accessories Mfg. Co. v. *Marshalltown Motor Material Mfg. Co.*, 167 Iowa 262; 149 N. W. 184	28
National Folding Box Co and Paper Co. v. *National Folding Box Co.*, 43 Weekly Reporter, 156	27

	Page
O. K. Bus and Baggage Co. v. *O. K. Transfer and Storage Co.*, 165 Pac. 136	27
Pettes v. *American Watchman's Clock Co.*, 89 App. Div. (N. Y.) 345, 85 N. Y. Supp. 900	26
Randall v. *British & American Shoe Co.*, 2 Ch. 354; 19 R. P. C. 393	26
Royal Baking Powder Co. v. *Federal Trade Commission*, 281 Fed. 744	21
Sartor v. *Schaden*, 101 N. W. 511	20
Simmons (C. F.) Co. v. *Mansfield Drug Co.*, 23 S. W. 165	20
Viano v. *Baccigalupo*, 183 Mass. 160, 67 N. E. 641	27
Warner & Co. v. *Lilly & Co.* 265 U. S. 526, 532	25, 34
Weinstock, Lubin & Co. v. *Marks*, 109 Cal. 529 42 Pac. 142	27
Winsted Hosiery Co. v. *Federal Trade Commission*, 272 Fed. 957	23
Zweck v. *Aberdeen Laundry & Dry Cleaning Co.*, 183 N. W. 118	27

OTHER AUTHORITIES CITED

Nims on Unfair Competition and Trade Marks (2d ed)	27

In the Supreme Court of the United States

OCTOBER TERM, 1928

No. —

FEDERAL TRADE COMMISSION, PETITIONER

v.

ALFRED KLESNER, DOING BUSINESS UNDER THE NAME "Shade Shop," Hooper & Klesner, respondent

---

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

The Solicitor General and the Chief Counsel of the Federal Trade Commission pray that a writ of certiorari issue to review a judgment of the Court of Appeals of the District of Columbia, which dismissed the Commission's petition for a preliminary injunction, and for enforcement of its order directing the respondent herein to cease and desist from unfair methods of competition, in violation of Section 5 of "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes." (38 Stat. 717.)

A. THE FACTS

This is a simple case of unfair competition in commerce in the District of Columbia, consisting of

the adoption by respondents, and their continued use thereafter, of a trade name, to wit, "Shade Shop," almost identical with the trade name "The Shade Shop," long previously adopted, and ever since continuously used by one W. Stokes Sammons to designate his business establishment.

Because the court below did not, as stated in its opinion, analyze the evidence adduced at the trial of this case (R. 425), and because of the basic importance of a clear understanding of the facts before seeking to apply the law—this statement of facts is somewhat longer than would otherwise be the case.

Sammons, the party complaining to the Commission, is an individual, and, as such, in the year 1901, entered into the business of manufacturing and selling window shades, exclusively (R. 98–99), under the name and style of "The Shade Shop." This name is now, and has at all times been, the name of the business established, created, and carried on by Sammons, and has ever been used to single out and identify the business conducted by him. It is not used merely to denote that Sammons makes and sells window shades. Practically all the commercial activities of "The Shade Shop" were carried on under this name—under it, Sammons had become well and favorably known to a substantial portion of the purchasing public, many of whom were not aware that he was personally identified with the business. (R. 20–21.)

Under this name he advertised in newspapers, periodicals, and telephone directories, and by signs on his place of business; established bank accounts, purchased goods, conducted correspondence, and receipted bills. Under this name, also, telephone inquiries were made of him, written orders were sent to him for goods, supplies were shipped to him, bills and checks were made out to him, and business houses with whom he had dealings carried his accounts. (R. 12, 15, 16, 17, 19, 20, 21, 23, 24, 25, 27, 31, 32, 33, 34, 46–47, 58, 61, 63, 67, 68, 70, 72–74, 79, 83, 86, 97, 99, 100–102, 103, 104, 105, 106, 109, 112–114, 116, 117–118, 122–123, 124, 127, 128–129, 133, 134, 136–140, 143, 148, 149–150, 159, 161–162, 163, 168, 169, 170, 173, 174, 176, 181, 183–184, 187, 192–193, 195, 199, 208, 217, 218, 224, 226, 232, 237, 251, 280, 282, 314, 316, 335–337, 338, 343–356, 366.) In this connection, the following testimony of Sammons (R. 149) is significant:

> Q. During this 15 or 20 years, has there been anybody in the District of Columbia, to your knowledge, who has used the trade name "The Shade Shop" in selling or dealing in window shades in any manner?
>
> A. Never, except myself.
>
> * * * * *
>
> Q. During this time, to your knowledge, have you ever known of anyone, any place outside of Washington and the District of Columbia, or anywhere in the United States, dealing in or manufacturing window shades

and trading under the name of "The Shade Shop"?

A. I purchase material from every manufacturer of shade cloth and rollers in America. I have been in their offices and I have interviewed with managers and salesmen. *They have never known in their accounts or never received reply from any firm in the United States with the trade name "The Shade Shop."*

Q. *Other than yours?*

A. *Other than mine.* (Italics supplied.)

Counsel for respondents, on cross-examination, sought to detract from the force of this evidence by questioning Sammons' statement that the latter had been "in all the concerns' offices which have manufactured shades in the United States." In this, however, he was unsuccessful—Sammons explaining that there were but five of such manufacturers in this country. (R. 149.)

There is some evidence which shows that the identity of Sammons was known, his name being used in a number of cases in juxtaposition with "The Shade Shop," and in a few instances by itself—these uses being in connection with billheads, letterheads, advertisements, checks and receipts signed by him, an automobile truck operated by him, bank accounts maintained by him, a lease signed by him, and checks made payable to him. (R. 24, 27, 31, 32, 33–34, 36, 51, 53, 56, 70, 73, 74, 76, 79, 89, 92, 98, 99, 100, 101, 104, 105, 111, 119, 124, 129, 133, 135, 140–141, 169–170, 182–183, 209, 228, 229, 234,

298, 315, 334, 337–342, 350, 357, 358–360, 361–367, 398.)

In the spring of 1911, Sammons suggested to Hooper & Klesner, a partnership in the painting and decorating business, the desirability of locating at the southeast corner of Twelfth and H Streets NW., and that if this partnership would rent the premises, he (Sammons) would sublease part of the space. They agreed. (R. 121–122, 172–173, 279–280.) Sammons' sublease with the then partnership appears as Res. Ex. 6. (R. 358–360.) Respondent Hooper left the partnership in October, 1919, and the respondent Klesner continued the business under the old firm name. (R. 313.)

When "The Shade Shop" moved into joint occupancy of the premises at Twelfth and H Streets NW., rented by the firm Hooper & Klesner, Sammons lettered the words " The Shade Shop" upon one window facing on the Twelfth Street side and another on the H Street side, to indicate his establishment (R. 72–73, 83, 280), and conducted his business, independently, as before, under the name "The Shade Shop" (R. 280). Hooper & Klesner occupied the front and Sammons the rear part of the store (R. 24, 72), with a partition between. The partnership continued its business of painting and decorating, and Sammons his business "The Shade Shop," always as an independent concern, in the work of making window shades.

Respondent Klesner testified that there was no competition in the store between Sammons and his

firm. "We called him in in every instance, if he was there, to wait on the customers" (of "The Shade Shop"). (R. 331.) Klesner also stated emphatically that "there were not two firms operating in shades there." (R. 331.) Sammons testified that his name did not appear anywhere on the windows or building. (R. 174; see also R. 25, 26, 281.)

It appears from all of the testimony that the business of "The Shade Shop" gradually increased (R. 187–188), until some time in November, 1915, when Sammons, for reasons not disclosed, breached his lease and decided to remove to two doors down the street (733 Twelfth Street) from his then location with Hooper & Klesner (R. 177–178). This removal was made on a Sunday morning, and things were progressing peaceably until Sammons started to remove from the windows the signs "The Shade Shop," which he had paid for. (R. 126.) At this point Klesner objected very strenuously and emphasized his objection by flourishing a revolver. Klesner was arrested and confined, during which time Sammons removed his signs and moved to his new place of business. (R. 24, 74–76, 86–90, 126–128, 283–285, Com. Ex. 30.)

After Sammons had changed the location of "The Shade Shop," Klesner and his then partner Hooper, who were not on good terms with Sammons (R. 197, 258–259), decided to go at once (R. 130) into the window-shade business and to secure for themselves the business of this nature which

Sammons had developed. Their intention to appropriate to their own use the good will previously built up by Sammons appears from the testimony of Klesner:

> Q. Now, when Mr. Sammons left Twelfth and H Streets, what did you do, so far as the business of window shades was concerned?
>
> A. Why, he had put us in a peculiar position. You remember, he approached us. Previous to him approaching us on Eleventh Street, we were dealing with S. Kann Sons Co., getting our shades there. When he broke his lease with us and moved out, we could not very well keep on dealing with him after that, and, in the meantime, Kann Sons had given up their shade shop and we knew of no other place to get shades the way we had previously gotten them made, and *we got together and talked it over and decided to carry on the window-shade business the same as Sammons had done, using the rear part of the store to operate in,* and in that way help contribute to the rent that he had refused to pay.
>
> Q. Did you consider that the rent, the whole of the $83.33, at that time a burden, or more than you felt you could pay?
>
> A. Yes, indeed. It was far more than we could afford to pay out of our little bit of shade work we were then doing. We felt, *inasmuch as since the public had come there and begin to come there* and as we had tried to get shade work more than we had tried to get before, *and he, being there, naturally*

> *would cause other people to know there were shades to be had in that store, we thought we may as well continue and put an extra in there, and try to make it pay that way; as it appeared later on we did make that end of it pay.* (R. 287.) (Italics supplied.)

In this connection, see also R. 28–29, 124.

In order to carry out this purpose, respondents put as a sign upon their windows the words "Shade Shop," *with letters of the same shape, size, and color, and in the identical location where Sammons had had his sign "The Shade Shop."* (R. 130, 132, 286; Com. Ex. 31 and 32, Res. Ex. 1.) They had letterheads and billheads prepared, upon which appeared, *for the first time*, the words *"Shade Shop"* (R. 257, 268, 313.)

The next step taken by the respondents was to cause their business to be listed in the telephone directory as "Shade Shop." It will be recalled that Sammons moved his establishment ("The Shade Shop") from Twelfth and H Streets NW. to 733 Twelfth Street in November, 1915. On January 3, 1916, the respondents contracted with the Chesapeake & Potomac Telephone Company (R. 49, 50) to list their place of business in the local telephone directory, both in the main alphabetical listing and in the classified business listing, as "Shade Shop, Hooper & Klesner." And these listings were inserted in said directories immediately *above* the listings of "The Shade Shop," Sam-

mons' establishment. (Com. Ex. 11, 12, 13, and 74.) They appeared as follows:

Main 4763 Shade Shop, Hooper & Klesner. S. E. Cor. 12th & H, NW.
Main 4874 Shade Shop The, S. S. Sammons, window shades. 733, 12th, NW.
—(Commission's Exhibit No. 12.)

Main 4763 Shade Shop, Hooper & Klesner. S. E. Cor. 12th & H, NW.
Main 4874 Shade Shop The, S. S. Sammons, window shades. 733, 12th, NW.
—(Commission's Exhibit No. 13.)

SHADE SHOP
HOOPER & KLESNER
Factory and Stores: 929 H Street N. W.
Main 4763

Main 4874 Shade Shop, The 830 13th N. W.

"THE SHADE SHOP"
W. Stokes Sammons, Prop.
Exclusive Manufacturers of
WINDOW SHADES
830 13th St. N. W. Main 4874
—(Commission's Exhibit No. 74.)

The telephone company soon afterwards, in order to eliminate what was considered nonessential matter, dropped the words "Hooper & Klesner" from the previous listing of "Shade Shop, Hooper & Klesner" (R. 54–55), and, allowing for changes of address, the main listings, for both respondents and Sammons, have been (Com. Ex. 11):

Shade Shop, 741—12th St. NW. Main 4763.
Shade Shop, 830—13th St. NW. Main 4874.

Respondents, however, have made no effort to have the firm name "Hooper & Klesner" restored to its original position following "Shade Shop." (R. 55, 57.) Furthermore, they have not requested the telephone company to drop the misleading listing of "Shade Shop," although such a request would have been readily acceded to, if made. (R. 57.)

Deception of the Public

Paragraph Seven of the Commission's findings as to the facts (R. 382–383) reads, in part, as follows:

> * * * there has been considerable confusion in the trade, and customers who have known or heard of "The Shade Shop," as conducted and carried on by the said Sammons, and who desired to purchase window shades therefrom, have been confused and deceived by the sign "Shade Shop," used as aforesaid by the respondent, and have gone to the storeroom of the respondent and there purchased window shades of him in the mistaken belief that they were dealing with the said W. Stokes Sammons; and that on certain occasions, when customers had entered respondent's store and made specific inquiries as to whether this was the storeroom operated by the said Sammons they were deceived by the employees of the respondent and were led to believe that it was the storeroom and the location and place of business of the said W. Stokes Sammons, when, in truth and in fact, the said Sammons was

> operating and conducting his business under the name of "The Shade Shop," at 723 Twelfth Street NW., as aforesaid. That the use of the term "Shade Shop" by the respondent in the listing and advertising sections of the telephone directory has caused and is causing similar confusion to the window-shade purchasing public throughout the District of Columbia, and the respondent, Alfred Klesner, is now carrying such paid advertisement in the said telephone directory, and suffering and permitting the said telephone company to list his business under the trade name of "Shade Shop" out of spite to said Sammons, with the purpose and intent to injure his said competitor in his window-shade business.

The above finding is supported by evidence in the record. (R. 11–13, 17–19, 20–22, 25, 27, 30, 32, 36–44, 37–38, 39, 45–47, 58–60, 63–65, 94–95, 147, 149–150, 158, 181, 182, 188, 195–196, 201–204, 223, 243, 253–254, 257, 263, 268, 288, 289, and 303 et seq.)

The facts found were based upon evidence taken (R. 10–371) on the issues raised by the Commission's complaint (R. 2–4) and respondents' answer (R. 5–7), and were embodied by the Commission in its report upon the facts (R. 379–383), and resulted in the issuance of an order requiring the respondents to cease and desist from doing business in the District of Columbia under the name "Shade Shop" (R. 384), "standing alone or in conjunction with other words." This was because when

the name "Shade Shop" was used by respondents, it was, for the most part, used in juxtaposition with the name of the former partnership "Hooper & Klesner."

The respondent failed and refused to obey the order, and the Commission thereupon applied to the Court of Appeals of the District of Columbia for a decree of enforcement. Briefs were filed and oral argument had. The Court, however, without considering the merits of the case, held that it was without jurisdiction in the premises and dismissed the petition. (R. 419.)

Upon the application of the Commission, this Court, upon certiorari, reviewed and reversed the judgment of the Court of Appeals and remanded the cause for further proceedings—concluding that the words "circuit court of appeals of the United States," in the Trade Commission Act, included the Court of Appeals of the District of Columbia as the appellate tribunal to be charged with the duty in the District of Columbia. (274 U. S. 145.)

After reargument, the Court below dismissed the Commission's petition for enforcement, on the ground that the name "Shade Shop," as used by the respondent, was a generic term, and merely descriptive of the business carried on by him, and that therefore the prior and exclusive use of this term by another concern engaged in the window-shade business was not such as to be entitled to legal protection. (25 F. (2d) 524; R. 424.) The time for filing petition for writ of certiorari has been extended to August 15, 1928. (R. 436.)

B. REASONS RELIED ON FOR THE ISSUANCE OF THE WRIT

(1) The Commission found, and the evidence supports the finding (R. 10), that the public was being deceived by the use of the name "Shade Shop" into dealing with respondent, when they intended to deal with "The Shade Shop." The action of the Court in setting aside the Commission's order leaves this condition of deception uncorrected and respondent free to continue to deceive. The condition should be corrected, and relief can come from this Court only.

(2) The Court failed to give effect to the Commission's finding of intention on the part of respondent to appropriate the business of Sammons by deceiving the public, which finding is supported by evidence (R. 6–10). This is, perhaps, due to the attitude of the Court, as expressed in its opinion: "We think, however, that the case can be disposed of *without an analysis of the testimony.*" (R. 425.)

(3) The Court has not given proper effect to the applicable decisions of this Court under the Federal Trade Commisssion Act. (Infra, 17–26.)

(4) The decision of the Court is in conflict with the decision of the Circuit Court of Appeals for the Ninth Circuit in *Juvenile Shoe Company, Inc.* v. *Federal Trade Commission*, 289 Fed. 57, which held that, while the word "Juvenile" was not susceptible of appropriation as a trade-mark for shoes, yet a corporation ("Juvenile Shoe Corporation") which had adopted that name under which to market children's shoes manufactured by it, was en-

titled to protection against the use of such name by a subsequent competitor ("Juvenile Shoe Company") in the same line of business; and that the Commission was amply justified in issuing an order commanding and enjoining the later comer to cease and desist from such unfair competition. The Juvenile Shoe Company thereupon applied to this Court for a writ of certiorari, urging, as the *"principal reason"* for the issuance thereof, *"the conflict between the decision of the Circuit Court of Appeals in this case and the decisions of the Supreme Court."* This Court, however, denied the petition. (263 U. S. 705.) And while "the refusal of an application for this extraordinary writ is in no case equivalent to an affirmance of the decree that is sought to be reviewed" (*Hamilton Shoe Co.* v. *Wolf Bros. & Co.*, 240 U. S. 251, 258), nevertheless it is respectfully urged that the refusal of this Honorable Court to acquiesce in petitioner's "principal," and, indeed, *only* reason for the issuance of the writ (i. e., the alleged conflict between the decision of the Circuit Court of Appeals and those of this Court, on this question) is not without significance.

Wherefore, it is respectfully submitted that the writ of certiorari should issue as prayed.

WILLIAM D. MITCHELL,
Solicitor General.

ROBT. E. HEALY,
Chief Counsel,
Federal Trade Commission.

AUGUST, 1928.

BRIEF

I

THE OPINION OF THE COURT BELOW

The opinion of the Court of Appeals of the District of Columbia is reported in 25 F. (2d) 524.

II

JURISDICTION

This was a petition to the Court of Appeals of the District of Columbia for the enforcement of an order of the Federal Trade Commission, entered under authority of Section 5 of "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes. (38 Stat. 717.) The jurisdiction of the Court below was invoked under the authority of Section 5 of the Act. The Court of Appeals dismissed the petition for want of jurisdiction. (R. 419.) This Court, upon certiorari, reversed the judgment of the Court of Appeals and remanded the cause for further proceedings. (274 U. S. 145.) After reargument, the Court below dismissed the Commission's petition. (R. 424.)

The decree of the Court of Appeals of the District of Columbia to be reviewed was entered April 2, 1928. (R. 432.) On June 22, 1928, on motion of the Solicitor General and the Chief Counsel of the Federal Trade Commission (Petitioner herein), Mr. Justice Van Devanter signed an order extending the time within which petition for writ of certi-

orari may be filed in this cause to and including August 15, 1928. (R. 436.)

The jurisdiction of this Court is invoked under Section 5 (paragraphs 4 and 5) of the Federal Trade Commission Act (38 Stat. 717), and under Section 240 of the Judicial Code, as amended by the Act of February 13, 1925 (*Federal Trade Commission* v. *Gratz*, 253 U. S. 421; *Federal Trade Commission* v. *Klesner*, 274 U. S. 145.)

III

STATEMENT OF THE CASE

A full statement of the case has been given under the heading, "A—The Facts," in the petition (supra, pp. 1–11), and, in the interest of brevity, will not be repeated at this point.

IV

SPECIFICATION OF ERRORS

It is submitted that the Court below erred:

(1) In holding that there was no evidence to support the Commission's finding that the public was being deceived by the use of the trade name "Shade Shop" by the respondents.

(2) In failing to give effect to the Commission's finding of intention on the part of respondents to appropriate the business of a competitor by deceiving the public, when such finding is supported by evidence.

(3) In not holding that the acts practiced by the respondents in this cause constituted unfair meth-

ods of competition, within the meaning of Section 5 of the Federal Trade Commission Act, and warranted the issuance of the Commission's order to cease and desist.

(4) In holding that the trade-name "The Shade Shop" was a purely generic or descriptive term.

(5) In holding that a trade-name consisting of a generic or descriptive term, and, as such, not susceptible of exclusive appropriation, is not entitled to protection against fraud on the part of a subsequent user.

(6) In not giving effect to the applicable decisions of this Court under the Federal Trade Commission Act.

V

ARGUMENT

1. The term "unfair methods of competition," as used in the Federal Trade Commission Act, includes practices opposed to good morals because characterized by deception and fraud

This Court, in *Federal Trade Commission* v. *Gratz*, 253 U. S. 421, 427, said:

> The words "unfair methods of competition" are not defined by the statute and their exact meaning is in dispute. It is for the courts, not the Commission, ultimately to determine as matter of law what they include. They are clearly inapplicable to practices never heretofore regarded as *opposed to good morals because characterized by deception, bad faith, fraud* or oppression, or as against public policy because of their danger-

> ous tendency unduly to hinder competition or create monopoly. (Italics supplied.)

This same definition is referred to with approval in *Federal Trade Commission* v. *Beech-Nut Packing Company,* 257 U. S. 441, 453; *Federal Trade Commission* v. *Sinclair Refining Company,* 261 U. S. 463, 475; and *Federal Trade Commission* v. *Raymond Bros.-Clark Co.,* 263 U. S. 565, 572. The same rule was applied also in *Federal Trade Commission* v. *Winsted Hoisery Company,* 258 U. S. 483, 493, 494, as the following excerpt shows:

> The labels in question are literally false, and, except those which bear the word "Merino," are palpably so. All are, as the Commission found, calculated to deceive and do in fact deceive a substantial portion of the purchasing public. * * * The facts show that it is to *the interest of the public* that a proceeding to stop the practice be brought. And they show also that the practice constitutes an unfair method of competition as against manufacturers of all wool knit underwear and as against those manufacturers of mixed wool and cotton underwear who brand their product truthfully. For when misbranded goods attract customers by means of the fraud which they perpetrate, trade is diverted from the producer of truthfully marked goods. * * * As a *substantial part of the public was still misled* by the use of the labels which the Winsted Company employed, *the public had an interest in stopping the practice* as wrongful; and

> since the business of its trade rivals who marked their goods truthfully was necessarily affected by that practice, the Commission was justified in its conclusion that the practice constituted an unfair method of competition. (Italics supplied.)

And the deception, the fraud—in other words, "the essence of the wrong in unfair competition consists in the sale of the goods of one manufacturer or vendor for those of another." (*Howe Scale Company* v. *Wyckoff, Seamans & Benedict,* 198 U. S. 118, 140.)

2. Proceedings under Section 5 of the Federal Trade Commission Act for the prevention of unfair methods of competition are based upon the public interest

In the excerpt from the Winsted Hosiery case (supra), it is noted that emphasis is placed on the "interest of the public" in the proceeding. Presumably this was a reference to the language of the statute, Section 5 of which, after declaring unfair methods of competition in commerce to be unlawful and empowering and directing the Commission to prevent them, says (par. 3):

> Whenever the Commission shall have reason to believe that any such person, partnership, or corporation has been or is using any unfair method of competition in commerce, and *if it shall appear to the Commission that a proceeding by it in respect thereof would be to the interest of the public,* it shall issue and serve upon such person, partnership, or corporation a complaint * * *. (Italics supplied.)

This represents an important development over the law with respect to unfair competition at the common law, where the action was between two private parties only, and the plaintiff, to succeed, must show that a property right had been invaded.

It is true that in such cases the courts speak of the deception of the public as a part of the wrong. See *G. W. Cole Co.* v. *American Cement & Oil Co.* (C. C. A., 1904), 130 Fed. 703; *Sartor* v. *Schaden* (Iowa, 1904), 101 N. W. 511. But the courts use evidence of the deception of the public as a test to determine whether the plaintiff has really suffered an injury to a property right. *C. F. Simmons Co.* v. *Mansfield Drug Co.* (Tenn. 1893), 23 S. W. 165; *Borthwick* v. *The Evening Post* (England, 1888), L. R. 37, Ch. D. 449. In a label or trade-mark case in unfair competition at common law the plaintiff's right of action is based upon his right of property in the label or trade-mark and the infringement thereof by the defendant, and this is so in equity cases, even though the defendant may show absence of intention to defraud and to compete unfairly. *Chapin-Sacks Mfg. Co.* v. *Hendler,* 254 Fed. 553, 556. But in a private case the plaintiff may not be able to convince the court that he has a valid trade-mark, yet he will nevertheless succeed if he is able to show that to the word or words which are the basis of his invalid trade-mark the public has given a secondary meaning. And because in this secondary

meaning there may be a property right the courts will in that event allow a recovery of damages or decree an injunction. But whether the case is one of infringement of a trade-mark or of unfair trading arising out of secondary meaning the plaintiff must show the invasion of a property right.

On the other hand, cases of unfair methods of competition under the Federal Trade Commission Act are cases based upon the theory of protection to the public whose rights are infringed or jeopardized by confusion of goods, or their composition or their sources of production, brought about by the unfair trade methods of the defendant. It is not necessary, though it is often helpful, then, to show infringement of trade-mark, or to show secondary meaning. It is enough to show that the acts of the defendant deceive or tend to deceive the public.

The opinion of the Court below is based, apparently, upon the theory that unless unfair competition at the common law is made out the case must fail. But if the learned Justice takes the position that the term "unfair methods of competition" in the Federal Trade Commission Act embraces no other class of cases than this, he is in error. This was the position unsuccessfully taken by counsel for the petitioner in the *Royal Baking Powder Company* v. *Federal Trade Commission,* 281 Fed. 744. The Circuit Court disposed of that argument in the following language:

> In the American Washboard Company case the complainant was the manufacturer

of a washboard having the rubbing face made of aluminum and upon which it used the word "Aluminum" as a trade name. It was the only manufacturer of such boards in the country, having secured a monopoly of all the sheet aluminum produced which was suitable for use in their manufacture. The bill which asked for an injunction alleged that the defendant had placed on the market a washboard on which it used the word "Aluminum," by reason of which the public was deceived into buying it as a genuine aluminum washboard, although there was none of that metal in its composition. The Circuit Court of Appeals for the Sixth Circuit, then composed of Judges Taft, Lurton, and Day, each of whom later became a member of the Supreme Court, held that the facts alleged did not entitle the complainant to relief, since it was not shown that purchasers bought defendant's boards in the belief that they were made by complainant. In the course of the opinion, which was written by Judge Day, he said:

"Can it be that a dealer who should make such articles only of pure wool could invoke the equitable jurisdiction of the courts to suppress the trade and business of all persons whose goods may deceive the public? We find no such authority in the books, and are clear in the opinion that if the doctrine is to be thus extended, and all persons compelled to deal solely in goods which are exactly what they are represented to be, the

remedy must come from the legislature and not from the courts."

The above case illustrates the reason which led Congress to enact the statute creating the Federal Trade Commission and making *unfair methods* of competition unlawful and empowering the Commission to put an end to them. By that statute the identical situation which the court in the above case said it was beyond its power to suppress has been brought within the jurisdiction of the Federal Trade Commission—created to redress unfair *methods* of competition. Before the enactment of the Federal Trade Commission Act the courts appear to have had jurisdiction of an action for unfair competition only when a property right of the complainant had been invaded. But the Federal Trade Commission Act gave authority to the Commission itself when it had reason to believe that any person, partnership, or corporation was using any unfair *method* of competition in commerce, *if it appeared to it that a proceeding by it in respect thereof "would be to the interest of the public"* to bring such offending party before it to answer to its complaint and after a hearing could, upon good cause shown, require it to cease and desist from its unlawful methods.

The answer to the contention of the counsel for the petitioner is found in a recent decision of the Supreme Court, which has not yet been published. In *Winsted Hosiery Company* v. *Federal Trade Commission,* 272

Fed. 957, this court had before it the method of an underwear manufacturing company of branding its products as wool, merino, etc., when in fact they were composed only partly of wool or merino. A great deal of testimony had been taken which this court thought fully established that the trade was not misled in any respect by the label complained of. But some witnesses testified that in their opinion some part of the consuming public was or might be misled into thinking the underwear so described was pure wool. It also appeared that the method of branding which this manufacturer pursued was in accord with the general custom and practice of the underwear trade throughout the United States and was well known to and recognized by the distributors of underwear in this country. We therefore held that the order of the Federal Trade Commission requiring the particular manufacturer to desist from such methods was error and did not constitute unfair competition. The reversal of the case by the Supreme Court has established the principle that advertisements which are false in fact constitute an unfair method of competition although it was one commonly practiced and not intended to mislead the trade. The labeling of commodities in such a way as to *deceive the public* is an unfair method of competition. The manufacturer must not brand his goods as "wool" when they are part wool and part cotton. And it is now made plain that the Statute has invested the Commission with jurisdiction to

order anyone who misrepresents the quality of his goods in his advertising to cease and desist from such unfair methods of competition.

In the case now before the court the Commission was convinced that its opinion was justified by the evidence that the petitioner in the use of its labels, and otherwise, was employing false and misleading advertising which was calculated and *designed to deceive the public and which did deceive the public* into buying a phosphate baking powder believing that it was the Dr. Price's Baking Powder which had been well known for 60 years as a cream of tartar powder, concealing and obscuring the fact that it was a radically different powder. The case is plainly governed by the principle laid down in the Widsted Hosiery Company case. (Italics supplied.)

In *Warner & Co.* v. *Lilly & Co.*, 265 U. S. 526, 532, this Court said:

Nevertheless, the right to which respondent is entitled is that of being protected against unfair competition, not of having the aid of a decree to create or support, or assist in creating or supporting, a monopoly of the sale of a preparation which everyone, including petitioner, is free to make and vend. The legal wrong does not consist in the mere use of chocolate as an ingredient, but *in the unfair and fraudulent advantage which is taken of such use to pass off the product as that of respondent. The use dissociated from the fraud is entirely lawful,*

and it is against the fraud that the injunction lies. (Italics supplied.)

3. The owner of a trade name which is purely descriptive is entitled to protection from fraud and unfair dealing on the part of a competitor

The Commission contends that enough has been shown by the record to warrant the belief that the trade name "The Shade Shop" was and is not used by Sammons in a purely descriptive manner. However, if this Court holds that the term is purely descriptive, yet, in view of the deception and fraud on the part of the respondents disclosed by the record (supra, pp. 6–11), it is submitted that the rule laid down by this court in *Warner & Co.* v. *Lilly & Co.* (supra) applies.

In the interest of brevity, a detailed discussion of the cases in support of this contention will not be indulged in at this time. However, there is set forth below a list of some of the cases in which relief has been accorded to the users of trade names which were purely or partially descriptive:

American Clay Mfg. Co. v. *American Clay Mfg. Co.* (*of N. J.*), 198 Pa. St. 189–191, 47 Atl. 936.

American Grocery Publishing Assn. v. *The Grocery Publishing Co.*, 25 Hun. (N. Y.) 398.

Randall v. *British & American Shoe Company*, 2 Ch. 354, 19 R. P. C. 393.

Pettes v. *American Watchman's Clock Company*, 89 App. Div. (N. Y.) 345, 85 N. Y. Supp. 900.

Army & Navy Cooperative Society v. *Army, Navy and Civil Service Cooperative Society of South Africa,* 19 R. P. C. 574–576.

Viano v. *Baccigalupo,* 183 Mass. 160, 67 N. E. 641.

Knott v. *Morgan,* 2 Keen, 213.

Weinstock, Lubin & Co. v. *Marks,* 109 Cal. 529, 42 Pac. 142.

National Folding Box and Paper Co. v. *National Folding Box Co.,* 43 Weekly Reporter, 156.

Girogosian v. *Chutjian,* 194 Mass. 504, 80 N. E. 647.

Nims on Unfair Competition and Trade Marks, 2d ed., 110.

McFall Electric & Telephone Co. v. *McFall Electric Co.,* 110 Ill. App. 182.

Cady v. *Schultz,* 19 R. I. 193, 32 Atl. 915.

Fuller v. *Huff et al.,* 104 Fed. 141, 143–144.

Koebel v. *Chicago Landlords' Protective Bureau,* 71 N. E. 362, 210 Ill. 176.

Zweck v. *Aberdeen Laundry & Dry Cleaning Co.,* 183 N. W. 118.

German American Button Co. v. *Heymsfeld,* 156 N. Y. Supp. 223.

O. K. Bus and Baggage Co. v. *O. K. Transfer and Storage Co.,* 165 Pac. 136.

Dunston v. *Los Angeles Van & Storage Co.,* 165 Cal. 89, 94; 131 Pac. 115.

Merchants' Detective Association v. *Detective Mercantile Agency,* 25 Ill. App. 250.

Material Men's Mercantile Assn. v. *New York Material Men's Mercantile Assn.,* 155 N. Y. Supp. 706.

Motor Accessories Mfg. Co. v. *Marshalltown Motor Material Mfg. Co.*, 167 Iowa, 262, 149 N. W. 184.

4. The trade name "The Shade Shop" was not used by Sammons merely to indicate the character of business carried on by him

While the term "The Shade Shop," as used by Sammons, might to a certain extent be considered a descriptive term and to indicate that "shades" might be purchased at his establishment, yet it is by no means as descriptive of the character of his business as the terms "barber shop," "candy shop," "hardware store," and "jewelry store" are indicative of the businesses carried on at such establishments. For, in the case of the four last-named types of business, it is not necessary for the prospective customers or purchaser, before entering the store in question, to carefully consider, for instance, what particular type of haircutting is done, or whether the candy, hardware, or jewelry is to be used for any particular purpose. Whatever type of haircut is desired may be obtained at the ordinary barber shop, and the same rule applies to the other articles anmed.

On the other hand, the trade name "The Shade Shop" may mean that any one of several kinds of "shades" may be purchased therein, such "shades" having entirely dissimilar uses. They may be window shades, lamp shades, sun shades, porch shades, or eye shades.

The evidence shows that Sammons did not use the name "The Shade Shop" merely to denote that

he made and sold window shades. Practically all of his commercial activities were carried on under this name. Under this name he advertised in newspapers, periodicals, and telephone directories, and by signs on his place of business; established bank accounts, purchased goods, conducted correpondence, and receipted bills. Under this name, also, telephone inquiries were made of him, written orders were sent to him for goods, supplies were shipped to him, bills and checks were made out to him, and business houses with whom he had dealings carried his accounts. (Supra, pp. 2–3.)

Furthermore (Record, 149), the uncontradicted testimony of the witness Sammons shows that during the twenty years he had been in business in the District of Columbia, no one other than himself had used the trade name "The Shade Shop" in selling or dealing in window shades in any manner. And he further testified that he purchased material from every manufacturer of shade cloth and rollers in America, and, as a result of interviews with their managers and salesmen, "they have never known in their accounts or never received reply from any firm in the United States with the trade name 'The Shade Shop,'" other than Sammons's establishment.

5. The Commission's findings of (a) intent on the part of respondent to appropriate the business of Sammons by deceiving the public; and (b) that the public was deceived by the respondent's use of the trade name "Shade Shop" into dealing with respondent when they intended to deal with Sammons "The Shade Shop"—are supported by the evidence

One of the considerations which induced the Court below to dismiss the Commission's petition was its conclusion that "there is a total absence of anything showing a use by defendant which would justify the charge of unfair competition." (R. 427.) It amplifies this by its remarks on page 428, viz, "In the absence of any showing that defendant was attempting to dispose of his goods under the pretense that they were the goods of Sammons, there is no ground whatever in law or reason for invoking the doctrine of unfair competition"; and "The record is silent as to any attempt on the part of defendant or his employees to deceive or entice Sammons' customers into dealing with him."

But Paragraph Seven of the Commission's findings as to the facts (R. 382–383) reads, in part, as follows:

> That respondent, Alfred Klesner, incensed and angered at Sammons because of his arrest and the circumstances connected with the removal of Sammons' sign as aforesaid, has refused to speak to Sammons since said trouble in the storeroom above referred to, and has during all this period continued this attitude of hatred and malice toward Sammons, so that immediately after Sammons had removed his business, as aforesaid, re-

spondent, Klesner, conferred with his then partner, Harry Hooper, and it was decided that they would immediately enter upon the the business of dealing in window shades, and that they would go after and get the window-shade business and trade which had been built up on this corner and in this storeroom by the said W. Stokes Sammons, trading under the name of "The Shade Shop"; and in pursuance of this plan and policy and with the further purpose of injuring the said W. Stokes Sammons, the respondent and his said partner placed upon the two windows of their storeroom the sign "Shade Shop," using the same size, style, and color of lettering, and in the same place as that of the sign "The Shade Shop" used theretofore by the said Sammons; and in furtherance of this plan they also placed upon their letterheads and billheads the words "Shade Shop," * * * and there has been considerable confusion in the trade, and customers who have known or heard of "The Shade Shop," as conducted and carried on by the said Sammons, and who desired to purchase window shades therefrom, have been confused and deceived by the sign "Shade Shop," used as aforesaid by the respondent, and have gone to the storeroom of the respondent and there purchased window shades of him in the mistaken belief that they were dealing with the said W. Stokes Sammons; and that on certain occasions, when customers had entered respondent's store and made specific

inquiries as to whether this was the storeroom operated by the said Sammons they were deceived by the employees of the respondent and were led to believe that it was the storeroom and the location and place of business of the said W. Stokes Sammons, when in truth and in fact, the said Sammons was operating and conducting his business under the name of "The Shade Shop," at 723 Twelfth Street NW., as aforesaid. That the use of the term "Shade Shop" by the respondent in the listing and advertising sections of the telephone directory has caused and is causing similar confusion to the window-shade purchasing public throughout the District of Columbia, and the respondent, Alfred Klesner, is now carrying such paid advertisement in the said telephone directory, and suffering and permitting the said telephone company to list his business under the trade name of "Shade Shop" out of spite to said Sammons, with the purpose and intent to injure his said competitor in his window-shade business.

Perhaps the failure of the Court below to discover evidence in support of the Commission's findings is to be found in its attitude, as expressed on page 425: "We think, however, that the case can be disposed of *without an analysis of the testimony.*" The printed transcript of the record in this case consists of over 400 pages, and the testimony itself (with the exhibits introduced in connection therewith) of 360 pages. The findings of the Commis-

sion in the respect indicated are clear and amply supported by the evidence in this record (supra, pp. 6–11). And, this being the case, the action of the Court below was unwarranted and should be reversed.

6. If the Commission's findings are supported by testimony, they are by the statute made conclusive

This principle is well established.

Paragraph 4 of Section 5 of the Trade Commission Act, provides that—

> The findings of the Commission as to the facts, if supported by testimony, shall be conclusive.

In *Federal Trade Commission* v. *Curtis Publishing Co.*, 260 U. S. 568, 580, Mr. Justice McReynolds said:

> Manifestly, the court must inquire whether the Commission's findings of fact are supported by evidence. *If so supported, they are conclusive.* (Italics supplied.)

In the same case, Mr. Chief Justice Taft used the following language:

> I think it of high importance that we should scrupulously comply with the evident intention of Congress that the Federal Commission be made the fact-finding body and that the Court should in its rulings preserve the Board's character as such and not interject its views of the facts where there is any conflict in the evidence (p. 583).

Unless this Honorable Court grants review of the decree of the Court below, the result will be that that portion of paragraph 4 of Section 5 of the Federal Trade Commission Act, which provides that "the findings of the Commission as to the facts, if supported by testimony, shall be conclusive," may be completely nullified by the failure or refusal of a Circuit Court of Appeals to analyze or consider the evidence adduced by the Commission in support of its findings—and legal principles enunciated which, while correct in the abstract, would be totally inapplicable if the facts were stated.

The attitude of the Court of Appeals of the District of Columbia in declining to analyze the testimony in this case is in sharp contrast with the action of this Honorable Court in *Warner & Co.* v. *Lilly & Co.* (265 U. S. 526, 528), in which Mr. Justice Sutherland said:

> The issue of unfair competition, on which the courts below differed, presents a question of more difficulty. The testimony is voluminous, *more than two hundred witnesses* having been examined; but, *since the question with which we are now dealing is primarily one of fact, we have found it necessary to examine and consider it.* (Italics supplied.)

In the instant case, where an appraisal of the facts is of vital importance but was declined by the Court below, there were but twenty-one witnesses.

7. The use by respondents of the partnership name "Hooper & Klesner" in juxtaposition with the trade name "Shade Shop," not sufficient to distinguish respondents' business from that of their competitor Sammons

The Court below (R. 429) calls attention to the fact that when the name "Shade Shop" was used by respondents, it was used in connection with the name of the former partnership "Hooper & Klesner"—citing this as a sufficient distinguishing mark to prevent the possibility of fraud. The complete answer to this is found in the proof that despite the use of the firm name the public has been deceived into believing the establishment to be that of Sammons. Moreover, to a substantial portion of the purchasing public, the term "Shade Shop" meant no one in a personal sense, but simply a place of business. The use of the former partnership name "Hooper & Klesner," therefore, by the respondents, in connection with "Shade Shop," did not convey any *new* meaning to those formerly doing business with Sammons, who did not know his identity. For all they knew, it may have signified that the long-time proprietor of "The Shade Shop" had finally decided to disclose his identity. And, in their minds, this long-time proprietor may have been "Hooper & Klesner" and not Sammons. In this connection, see the testimony of Mrs. Bowie (R. 19–20), and Mrs. Lines (R. 47).

VI

CONCLUSION

When this proceeding was before this Honorable Court on the question of jurisdiction (274 U. S. 145, 151–152), the following language was used:

> The statute is clear in its direction that the Commission shall make orders preventing persons engaged in the District from using the forbidden methods. *Therefore the Commission was authorized to make the order which was made in this case.* (Italics supplied.)

Again (p. 159):

> They were not left in the air without any sanction against *a defiant litigant, as would be the result in the present case, were the view we have taken not to prevail.* (Italics supplied.)

It is submitted that the decision of the Court below was erroneous, and that the decree should be reversed.

WILLIAM D. MITCHELL,
Solicitor General.

ROBT. E. HEALY,
Chief Counsel,
Federal Trade Commission.

AUGUST, 1928.

○

FILE COPY

Office Supreme Court,
FILED
FEB 23 192
CHARLES ELMORE C

No. 368 8

In the Supreme Court of the United States

OCTOBER TERM, 1928

FEDERAL TRADE COMMISSION, PETITIONER

v.

ALFRED KLESNER, DOING BUSINESS UNDER THE NAME "SHADE SHOP," HOOPER & KLESNER, RESPONDENT

ON CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

BRIEF FOR PETITIONER

U.S. GOVERNMENT PRINTING OFFICE: 1928

TABLE OF CONTENTS

	Page
Opinion below	1
Jurisdiction	1
The questions presented	2
The statutes	3
Statement of the case	3
Specification of errors to be urged	8
Summary of the argument	9
Argument	12
I. The term "unfair methods of competition" as used in the Federal Trade Commission Act includes practices opposed to good morals because characterized by deception and fraud	12
II. The practices pursued by respondents in this case have always been regarded as opposed to good morals, because characterized by deception and fraud	13
III. The trade name "The Shade Shop" is not a purely descriptive term, as applied to window shades	16
IV. Though the trade name "The Shade Shop" be descriptive in its primary signification, if it has acquired a secondary meaning, a competitor will not be permitted to adopt the same name for the purpose of deceiving and defrauding purchasers	17
V. Respondent did not use the words "Shade Shop" descriptively, but as a trade name	27
VI. Even if the trade name "The Shade Shop" in its primary signification is descriptive, where a secondary meaning has attached, a subsequent user will be required to plainly distinguish his establishment	29
VII. The respondent did not distinguish his place of business and deception of the public followed	31
VIII. The Commission has jurisdiction of cases of this class	35
IX. Whether a proceding by the Commission would be to the interest of the public is an administrative question for determination by the Commission	43
X. There is a sufficient public interest in this case	45
Conclusion	46
Appendix A.—Section 5, Federal Trade Commission Act	48
Appendix B.—Detailed analysis of evidence	51

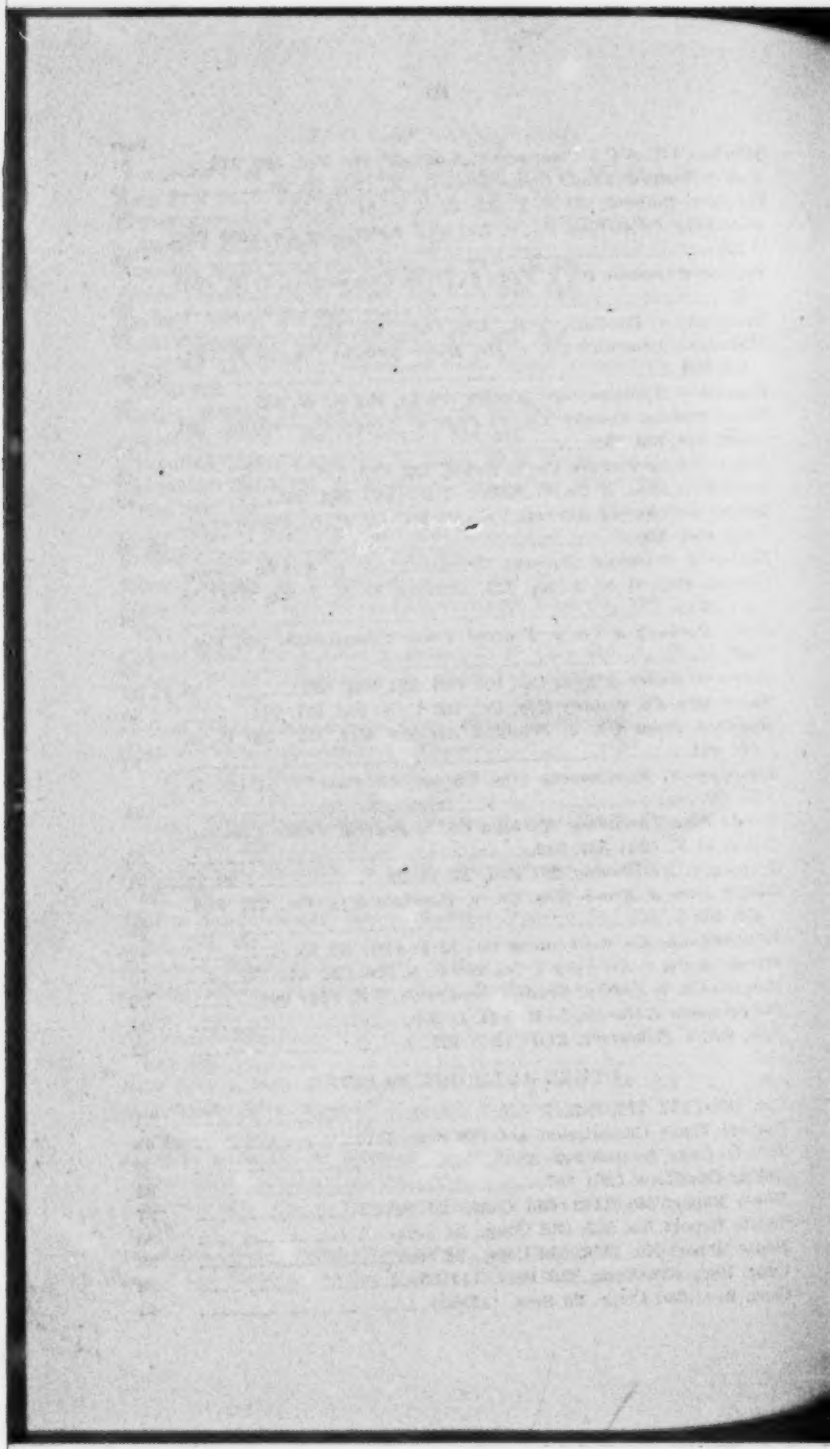
TABLE OF CASES CITED

	Page
Armstrong Cork Co. v. *Ringwalt Linoleum Works*, 235 Fed. 458	36
Ajax Tool Co. v. *Buchalter*, 211 N. Y. Supp. 241	42
British-American Tobacco Co. Ltd. v. *British-American Cigar Stores Co.*, 211 Fed. 933	24
Brooklyn White Lead Co. v. *Masury*, 25 Barb. 416	13
Brown Chemical Co. v. *Meyer*, 139 U. S. 540, 542	15
Buzby v. *Davis*, 150 Fed. 275	20
Canal Company v. *Clark*, 13 Wall. 311, 325, 327	13, 16, 18
Cleveland Opera Co. v. *Cleveland Civic Opera Association*, 154 N. E. 352	26
Coats v. *Merrick Thread Co.*, 149 U. S. 562, 566	15
Collins Co. v. *Paist Co.*, 14 F. (2d) 614, 615	42, 43
Computing Cheese Cutter Co. v. *Dunn*, 88 N. E., 93	26
Computing Scale Co. v. *Standard Computing Scale Co.*, 118 Fed. 965, 967	18
Dodge Bros. v. *East*, 8 F. (2d) 872, 875	42
Draper v. *Sherrett*, 116 Fed. 206, 209	42
Electric Supply Co. v. *Hess et ux.*, 245 Pac. 27	26
Elgin National Watch Co. v. *Illinois Watch Case Co.*, 179 U. S. 665, 673-674, 677	18, 29
Federal Trade Commission v. *Balmé*, 23 F. (2d) 615	36, 37, 42, 46
Federal Trade Commission v. *Beech-Nut Packing Co.*, 257 U. S. 441, 453	12
Federal Trade Commission v. *Gratz*, 253 U. S. 421, 427	2, 12
Federal Trade Commission v. *Klesner:*	
25 F. (2d) 524	1
274 U. S. 145	2, 3
Federal Trade Commission v. *Raymond Bros.-Clark Co.*, 263 U. S. 565, 572	12
Federal Trade Commission v. *Sinclair Refining Co.*, 261 U. S. 463, 475	12
Federal Trade Commission v. *Winsted Hosiery Co.*, 258 U. S. 483, 493, 494	10, 12, 36
Fischer v. *Blank*, 33 N. E. 1040, 1041	42
French Republic v. *Saratoga Vichy Spring Co.*, 191 U. S. 427, 435	18, 31
Guarantee Veterinary Co. v. *Federal Trade Commission*, 285 Fed. 853	36
Hills Bros. v. *Federal Trade Commission* 9 F. (2d) 481, 483	45
Howe Scale Co. v. *Wyckoff, Seamans & Benedict*, 198 U. S. 118, 140	14
Juvenile Shoe Co. v. *Federal Trade Commission* (289 Fed. 57)	25, 36, 37, 46
Lawrence Mfg. Co. v. *Tennessee Mfg. Co.*, 138 U. S. 537, 549, 551	14
Lowe Bros. Co. v. *Toledo Varnish Co.*, 168 Fed. 627	26
Luxor Cab Corp. v. *Leading Cab Co.*, 211 N. Y. Supp. 886	42

	Page
Merriam (G. & C.) Company v. *Saalfield*, 198 Fed. 369, 373	31
Moir v. *Federal Trade Commission*, 12 F. (2d) 22, 28	45
People v. *Ballard*, 134 N. Y. 269, 32 N. E. 54, 58, 59	45
Photoplay Publishing Co. v. *LaVerne Publishing Co.*, 269 Fed. 730	24
Proctor & Gamble Co. v. *Federal Trade Commission*, 11 F. (2d) 47	36
Reddaway v. *Banham, L. R.*, App. Cas. 1896, 199	30
Richmond Remedies Co. v. *Dr. Miles Medical Co.*, 16 F. (2d) 598, 602	15, 26
Rodseth v. *Northwestern Marble Works*, 152 N. W. 885	26
Royal Baking Powder Co. v. *Federal Trade Commission*, 281 Fed. 744, 752, 753	36
Royal Baking Powder Co. v. *Royal*, 122 Fed. 337	42
Rosenberg Bros. & Co. v. *Elliott*, 7 F. (2d) 962, 965	42
Rubber & Celluloid Harness Trimming Co. v. *F. W. Devoe et al.*, 233 Fed. 150	26, 28
Rubber & Celluloid Harness Trimming Co. v. *Rubber Bound Brush Co.*, 81 N. J. Eq. 419, affirmed 81 N. J. Eq. 519; 88 Atl. 210	26
Sears, Roebuck & Co. v. *Federal Trade Commission*, 258 Fed. 307	36
Shaver v. *Heller & Merz Co.*, 108 Fed. 821, 831, 832	19, 21, 32
Singer Mfg. Co. v. *June Mfg. Co.*, 163 U. S. 169, 187, 204	30
Standard Paint Co. v. *Trinidad Asphalt Mfg. Co.*, 220 U. S. 446, 461	15
Thompson v. *Montgomery* (the "*Stone Ale Case*"), 41 Ch. D. 35, 50	24
Toledo Pipe Threading Machine Co. v. *Federal Trade Commission*, 11 F. (2d) 337, 342	45
Trappey v. *McIlhenny*, 281 Fed. 23, 25, 28	20, 22, 28, 31
United Lace & Braid Mfg. Co. v. *Barthels Mfg. Co.*, 221 Fed. 456, 462	28
Vick Medicine Co. v. *Chemical Co.*, 11 F. (2d) 33, 35	42
Warner & Co. v. *Eli Lilly & Co.*, 265 U. S. 526, 528, 531–532	15
Winston Co. v. *Federal Trade Commission*, 3 F. (2d) 961	36
Wotherspoon v. *Currie*, L. R. 5 H. L. 508	24
Yale, etc., v. *Robertson*, 21 F. (2d) 467	42

OTHER AUTHORITIES CITED

Cyc. (38), 771, 772, 792	31
Federal Trade Commission Act (38 Stat. 717)	44, 48
Judicial Code, section 240	2
Ruling Case Law (26) 887	31
House Report No. 1142, 63d Cong., 2d Sess.	37
Senate Report No. 597, 63d Cong., 2d Sess.	38
House Report No. 1553, 63d Cong., 2d Sess.	38
Cong. Rec., 63d Cong., 2d Sess. (11105)	39
Cong. Rec., 63d Cong., 2d Sess. (12980)	40



In the Supreme Court of the United States

OCTOBER TERM, 1928

No. 363

FEDERAL TRADE COMMISSION, PETITIONER

v.

ALFRED KLESNER, DOING BUSINESS UNDER THE NAME "Shade Shop," Hooper & Klesner

---

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

OPINION BELOW

The opinion of the Court of Appeals of the District (R. 453) is reported in 25 F. (2d) 524.

JURISDICTION

The judgment of the Court of Appeals was entered April 2, 1928. (R. 457.) On June 22, 1928, a Justice of this Court extended the time for filing a petition for certiorari to and including August 15, 1928. (R., Vol. II, p. 14.) Petition for certiorari was filed August 15, 1928, and was granted October 22, 1928. (R. 458.) The proceeding was instituted in the Court of Appeals of the District by the Federal Trade Commission to enforce an order of the

Commission. The jurisdiction of this Court rests on section 5 of the Federal Trade Commission Act (c. 311, 38 Stat. 717; U. S. C. title 15, section 45), and on section 240 of the Judicial Code as amended by the Act of February 13, 1925 (*Federal Trade Commission* v. *Gratz*, 253 U. S. 421; *Federal Trade Commission* v. *Klesner*, 274 U. S. 145.)

THE QUESTIONS PRESENTED

One Sammons had long been selling window shades in the District under the trade name of "The Shade Shop." The Federal Trade Commission, on a hearing pursuant to section 5 of the Federal Trade Commission Act, found that the respondent Klesner was using the name "Shade Shop" in connection with his own name for the purpose of deceiving the public and gaining the business built up by Sammons, and found this to be unfair competition and ordered Klesner to desist from using the term "Shade Shop." In proceedings instituted by the Commission in the Court of Appeals the court refused to enforce obedience to this order.

The principal questions in the case are whether there was substantial evidence to support the Commission's findings that the respondent was guilty of unfair competition, and was using the name "Shade Shop" to deceive Sammons' customers, and whether the name "The Shade Shop" is merely a descriptive term which may be used by the respondent or anyone else, regardless of intent or effect on Sammons' business, or whether the name

had acquired a secondary meaning in this case as denoting a particular establishment. The question also occurs whether there is sufficient public interest in a case of this type to warrant action by the Commission under the terms of the Federal Trade Commission Act.

THE STATUTES

Section 5 of the Federal Trade Commision Act is in the appendix hereto (p. 48).

STATEMENT

This is a proceeding instituted by the Federal Trade Commission in the Court of Appeals of the District of Columbia (R. 417) to enforce obedience to an order of the Commission (R. 416) directing the respondent to desist from using the words "Shade Shop" alone or in conjunction with other words as an identification of the business conducted by him. The Court of Appeals in June, 1925 (R. 451) dismissed the proceeding for want of jurisdiction, on the ground that the Court of Appeals of the District was not a Circuit Court of Appeals authorized to entertain such proceedings, within the meaning of the Federal Trade Commission Act. On certiorari this court held that the Court of Appeals had jurisdiction and reversed its judgment. (*Federal Trade Commission* v. *Klesner,* 274 U. S. 145.)

In December, 1920, the Commission, on complaint of one W. Stokes Sammons, charged this respondent with unfair methods of competition in com-

merce. After a hearing the Commission made findings. (R. 411–416.) It found that Sammons is a resident of the District and has been engaged exclusively since 1901 in manufacturing and selling window shades throughout the District and in near-by States under the trade name of "The Shade Shop," adopted by him in 1901, and since continuously used, and has been the only person in the District dealing in window shades under that name until the respondent, Klesner, adopted the name "Shade Shop, Hooper & Klesner," that because of this and the course of business, and by advertisements and long usage, "The Shade Shop" has come to mean to the public the shade business owned and operated by Sammons. (R. 413.) In May, 1914, the respondent, with his then partner, one Hooper, holding a leasehold in a store at the southeast corner of Twelfth and H Streets NW., sublet (R. 390) to Sammons one-half of the space for a period of two years, to conduct therein "The Shade Shop." Hooper & Klesner were engaged in wallpapering and interior decorating, and had never been in the business of dealing in window shades, except to receive occasional orders which they turned over to Sammons or some other shade dealer and on which they received a commission.

In November, 1915, Sammons leased the store at 733 Twelfth Street NW. and moved his business thereto. When making the move and removing the sign "The Shade Shop" from the premises leased

from Klesner, the latter made trouble threatening Sammons with violence and was arrested.

The findings are to the effect that Klesner was thus angered and undertook to conduct a window-shade business in the premises he had formerly sublet to Sammons, and deliberately undertook to get Sammons' business from him, leading Sammons' customers to think that Sammons' business was still being conducted at Twelfth and H Streets NW. With that purpose, the sign "Shade Shop" was placed upon the windows of Sammons' old quarters, in the same size, style, and color of lettering as had been used in the sign "The Shade Shop" theretofore used by Sammons, and on letterheads, in telephone directory, and in other ways used the term "Shade Shop, Hooper & Klesner." The findings also show that customers of Sammons were deceived by the respondent and his employees when they entered the store formerly occupied by Sammons, and led to believe that they were in the shade shop of Sammons. The Commission held that this was unfair competition and issued its order to desist from using the name "Shade Shop."

The Circuit Court of Appeals held that the name "The Shade Shop" was a generic name descriptive of the trade or business conducted by the respondent, and that under no circumstances could Sammons acquire any exclusive right to it. It also said (R. 455):

> There is a total absence of anything showing a use by defendant which would justify the charge of unfair competition, but on the contrary a use ordinarily employed by those engaged in his line of business.

It said (p. 456):

> The record is silent as to any attempt on the part of defendant or his employees to deceive or entice Sammons' customers into dealing with him.

These statements, which are not supported by the record, may be explained by another statement of the court below (p. 454):

> Considerable evidence was adduced showing the competitive character of the business between defendant and Sammons, and establishing some confusion in trade by customers going to defendant's shop when they were in fact intending to do business with Sammons. We think, however, that the case can be disposed of without an analysis of the testimony, since it clearly appears and is conceded that the use was limited, as charged in the complaint, to a sign or signs painted on his place of business, on an automobile used in connection with his business, and to a notice appearing in the classified business section of the telephone directory of the city of Washington. In each instance the name was used in connection with the firm name Hooper & Klesner.

The court below disposed of the case on the ground that it was immaterial whether there was any intent to deceive the public, or by deception to gain Sammons' trade, and that the term "Shade Shop" could be used by any one regardless of circumstances or intent.

Section 5 of the Federal Trade Commission Act provides that "the findings of the Commission as to the facts, if supported by testimony, shall be conclusive."

Because of this misapprehension by the court below and the statements in its opinion, it is necessary here to present an analysis of the testimony before the Commission to show that there was evidence to support its findings. We have placed this analysis of the evidence in the appendix hereto, at page 51. An examination of it is necessary to a full understanding of this case, and it is placed in the appendix, not because it is unimportant but to avoid confusion as to the arrangement of this brief. It discloses convincing evidence that the adoption of the term "Shade Shop" by the respondent was not a bona fide effort to describe his business, but was part of a deliberate plan to deceive the public, to deceive Sammons' customers, to gain away from Sammons the trade he had built up under the name "The Shade Shop," and that the respondent was doing his utmost to make the public believe that Sammons was still conducting "The Shade Shop" at his former location now occupied by the respond-

ent. The record contains convincing proof that this effort was in considerable measure successful, and that customers of Sammons were being deceived, and those who desired to trade with him were misled, and that these unfair and deceptive methods operated to Sammons' detriment in competition.

SPECIFICATION OF ERRORS TO BE URGED

The court below erred—

1. In holding that there was no evidence to support the Commission's finding that the public was being deceived by the use of the trade name "Shade Shop" by respondents.

2. In failing to give effect to the Commission's finding of intention on the part of respondents to appropriate the business of a competitor by deceiving the public when such finding is supported by evidence.

3. In not holding that the acts practiced by the respondents in this cause constituted unfair methods of competition within the meaning of section 5 of the Federal Trade Commission Act, and warranted the issuance of the Commission's order to cease and desist.

4. In holding that the trade name "The Shade Shop" was a purely generic or descriptive term as applied to window shades.

5. In not holding that when a trade name for an establishment, though it is descriptive in its primary signification, has acquired a secondary mean-

ing, a competitor will be restrained from using it, though he may use the words of which it is constituted descriptively.

6. In holding that respondent sufficiently distinguished his establishment by the use in some relations of the firm name.

7. In not giving effect to the applicable decisions of this Court under the Federal Trade Commission Act.

SUMMARY OF THE ARGUMENT

1. The practice prohibited by the Commission's order is an unfair method of competition within the meaning of section 5 of the Trade Commission Act. The Act declares unlawful methods characterized by deception, bad faith, fraud, or oppression. The intentional passing off of one's establishment or goods as those of another has frequently been declared by this court to be a fraud on the public and on the competitor.

2. The trade name "The Shade Shop" is not purely a descriptive term as applied to a store which deals in window shades. It does not advise the prospective purchaser what sort of shades may be had therein.

3. Even though the name be descriptive in its primary signification, it had, in this instance, acquired a secondary meaning as denoting a particular establishment. The respondent will, therefore, not be allowed to adopt the same or practically the same trade name with the intention of deceiving the pub-

lic and appropriating the trade of the senior company. Respondent may use the words descriptively but not as a trade name. Use as a trade name is not a descriptive use. Respondent should be enjoined from using the trade name "Shade Shop."

4. If respondent may use the trade name "Shade Shop" he must plainly and unmistakably distinguish his establishment from "The Shade Shop." In advertising respondent distinguished only by using the firm name "Hooper & Klesner" in type smaller than the name "Shade Shop." In the listing in the telephone book no distinction was made, the names appearing "Shade Shop," and "Shade Shop." (R. 369.) The use of a firm or company name has frequently been held not sufficiently to distinguish the junior from the senior business. The proof of deception and passing off demonstrates that respondent failed adequately to distinguish his business. He should be required affirmatively and positively to distinguish it.

5. The case at bar falls within a class of which the Commission has jurisdiction. This is expressly held by two circuit courts of appeals. The history of the legislation demonstrates that Congress intended to include such cases within the prohibition of the Act. These cases embrace every element found in *Federal Trade Commission* v. *Winsted Hosiery Co.* (258 U. S. 483) and numerous cases under the Act decided by the several circuit courts of appeals. One of the bases of relief in

these cases under equity jurisprudence is the protection of the public.

6. The question whether a proceeding by the Commission would be to the interest of the public is a preliminary administrative question which the statute commits to the Commission for final decision. The Act provides that if "it shall appear *to the Commission* that a proceeding by it would be to the interest of the public," it shall issue its complaint, etc. An order to cease and desist from the use of a method unfair within the meaning of the Act may not be set aside because the court may disagree with the Commission respecting the advisability of instituting the proceeding.

7. A proceeding by the Commission in this case was to the interest of the public of the District of Columbia. Respondent and "The Shade Shop" are both substantial companies with rapidly growing businesses. The Act expressly applies to commerce within the District of Columbia. When inserting this provision Congress acted in its capacity of a local legislature. The business of each of the companies involved, viewed as local business in window shades, is very substantial and the companies doubtless reach some thousands of persons in Washington. It is not necessary in a proceeding under this provision in the Act to show that widespread public interest which attaches to a proceeding involving commerce national in its character.

ARGUMENT

I

The term "unfair methods of competition," as used in the Federal Trade Commission Act, includes practices opposed to good morals because characterized by deception and fraud

This court, in *Federal Trade Commission* v. *Gratz*, 253 U. S. 421, 427, said:

> The words "unfair method of competition" are not defined by the statute and their exact meaning is in dispute. It is for the courts, not the commission, ultimately to determine as matter of law what they include. They are clearly inapplicable to practices never heretofore regarded as *opposed to good morals because characterized by deception, bad faith, fraud* or oppression, or as against public policy because of their dangerous tendency unduly to hinder competition or create monopoly. (Italics supplied.)

This same definition is referred to with approval in *Federal Trade Commission* v. *Beech-Nut Packing Company*, 257 U. S. 441, 453; *Federal Trade Commission* v. *Winsted Hosiery Company*, 258 U. S. 483, 493, 494; *Federal Trade Commission* v. *Sinclair Refining Company*, 261 U. S. 463, 475; and *Federal Trade Commission* v. *Raymond Bros.-Clark Co.*, 263 U. S. 565, 572.

II

The practices pursued by respondents in this case have always been regarded as opposed to good morals, because characterized by deception and fraud

In deliberately adopting the trade-name "Shade Shop," in almost exact simulation of the trade-name "The Shade Shop," long previously adopted and ever since continuously used by Sammons, and with the expressed intention of securing the benefit of the good will built up by Sammons, respondents have committed themselves to a course of conduct which has been condemned by the courts from the beginning, as a fraud upon the public and upon the competitor.

In the leading case of *Canal Company* v. *Clark* (13 Wall. 311), relied upon extensively by the Court below, where the terms "trade-mark" and "trade-name" are used interchangeably, this Court, referring with approval to the case of *Brooklyn White Lead Company* v. *Masury* (25 Barb. 416), where injunction was granted, said:

> It was a case of fraud. He had assumed a false name in imitation of a prior true one, *and with the obvious design of leading the public to think his manufacture was that of the plaintiff* (p. 325). (Italics supplied.)

Again (p. 327):

> It is only when the adoption or imitation of what is claimed to be a trade-mark amounts to *a false representation, express*

> *or implied, designed or incidental,* that there is any title to relief against it. (Italics supplied.)

In *Lawrence Manufacturing Company* v. *Tennessee Manufacturing Company,* 138 U. S. 537, 549, 551, this Court, by Mr. Chief Justice Fuller, said:

> It seems, however, to be contended that plaintiff was entitled at least to an injunction, upon the principles applicable to cases analogous to trade-marks, that is to say, on the ground of fraud on the public and on the plaintiff, perpetrated by defendant by intentionally and fraudulently selling its goods as those of the plaintiff. *Undoubtedly an unfair and fraudulent competition against the business of the plaintiff—conducted with the intent, on the part of the defendant, to avail itself of the reputation of the plaintiff to palm off its goods as plaintiff's—would, in a proper case, constitute ground for relief (p. 549).* (Italics supplied.)
>
> * * * * *
>
> But the deceitful representation or perfidious dealing must be made out or be clearly inferable from the circumstances (p. 551).

In *Howe Scale Company* v. *Wyckoff, Seamans & Benedict,* 198 U. S. 118, 140, the same eminent jurist epitomized the doctrine of unfair competition:

> The essence of the wrong in unfair competition consists in the sale of the goods of one manufacturer or vendor for those of another.

Mr. Justice Sutherland, in the recent case of *Warner & Company* v. *Eli Lilly & Company*, 265 U. S. 526, 531–532, said:

> The manufacturer or vendor is entitled to the reputation which his goods have acquired and the public to the means of distinguishing between them and other goods; and protection is accorded against unfair dealing whether there be a technical trade-mark or not. The wrong is in the sale of the goods of one manufacturer or vendor as those of another. * * * The use dissociated from the fraud is entirely lawful, and it is against the fraud that the injunction lies.

See also *Coats* v. *Merrick Thread Co.*, 149 U. S. 562, 566; *Standard Paint Co.* v. *Trinidad Asphalt Manufacturing Co.*, 220 U. S. 446, 461; *Richmond Remedies Co.* v. *Dr. Miles Medical Co.*, 16 F. (2d) 598 (CCA–8).

And even though the widest latitude is allowed in the use of one's own name, such use will be enjoined when the object is fraud. Thus, in *Brown Chemical Co.* v. *Meyer*, 139 U. S. 540, 542:

> * * * Cases are not wanting of injunctions issued to restrain the use even of one's own name where a fraud upon another is manifestly intended * * * (citing a number of cases).

III

The trade name "The Shade Shop" is not a purely descriptive term, as applied to window shades

The Court below relies on the well-established principle, as enunciated in *Canal Co.* v. *Clark* (*supra*), namely, that a name merely descriptive of an article of trade, of its qualities, ingredients, or characteristics, can not be employed as a trade-mark and the exclusive use of it protected; and places the trade name "The Shade Shop" in the same category as "barber shop," "candy shop," "hardware store," and "jewelry store". (R. 455.)

While it is true that the term "The Shade Shop," as used by Sammons, might to a certain extent be considered a descriptive term, and to indicate that "shades" of some or all kinds might be purchased at his establishment, yet it is by no means as descriptive of the character of his business as the terms "barber shop," "candy shop," "hardware store," and "jewelry store" are indicative of the businesses carried on at such establishments. These are terms which have been in common use for years to designate a class of business establishments and are as exactly applicable to all of a class. On the other hand, the idea of naming a place of business where window shades were manufactured and sold "The Shade Shop" must have been novel. The evidence shows that so far as the manufacturers of window shades were advised this was the only store dealing in these goods which its owners styled "The

Shade Shop" or "Shade Shop." No such expression was in common use prior to its adoption by Sammons.

Furthermore, the name "The Shade Shop" is not sufficiently descriptive to be informative. The word "shade" is applied to articles used for entirely different purposes. There are window shades, lamp shades, sunshades, porch shades, eye shades, and possibly other kinds of shades. "The Shade Shop" may therefore deal in any one of these articles. The name must be supplemented by further information to be informative.

Sammons, when asked why he used the words "window shades" in connection with his trade name "The Shade Shop," replied that this was done *to describe the article he manufactured and sold*, and that the two names conveyed different mea ngs to the public. (R. 197.) "Mr. Wardman could put 'The Shade Shop' on his place down there. He sells *lamp* shades. * * * That is the reason I put 'window shades' next to mine." (R. 198.) In this connection, see also R. 162–163, 219–222.

IV

Though the trade name "The Shade Shop" be descriptive in its primary signification, if it has acquired a secondary meaning a competitor will not be permitted to adopt the same name for the purpose of deceiving and defrauding purchasers

But even though the trade designation of a business establishment or of a product or commodity is composed of geographical or descriptive terms, a

court of equity will enjoin a trade rival from adopting the same or a substantially similar name for his business establishment or for his product where it is proven that the trade designation or name has come to mean to the public the place of business or the product of a particular manufacturer or trader. It is in this that the law of unfair competition differs from the law of technical trade-marks.

The exact question presented here seems not to have been passed upon by this Court. The principle has been announced that where a geographical or descriptive name has acquired a secondary meaning, its use in that sense will be protected by restraining the use by others in such a way as to amount to a fraud on the public. *Canal Co.* v. *Clark, supra; Elgin National Watch Co.* v. *Illinois Watch Case Co.,* 179 U. S. 665, 673, 674, 677; *French Republic* v. *Saratoga Vichy Spring Co.,* 191 U. S. 427, 435.) But it appears not to have been necessary, in the cases reaching this court, to prescribe the nature and extent of the protection which will be afforded.

But the courts of appeals have been called upon not only to lay down the principle but to define the use of such trade names which will be permitted.

The principle was thus stated by Judge Lurton in *Computing Scale Co.* v. *Standard Computing Scale Co.* (118 Fed. 965–967):

> If the complainant has a technical trade-mark in the word "computing," its use by others will be restrained, for a wrongful in-

> tent in so using it will be presumed. But when the word is incapable of becoming a valid trade-mark, because descriptive or geographical, yet has by use come to stand for a particular maker or vendor, its use by another in this secondary sense will be restrained as unfair and fraudulent competition, and its use in its primary or common sense confined in such a way as will prevent a probable deceit by enabling one maker or vendor to sell his article as the product of another. (*Lawrence Mfg. Co.* v. *Tennessee Mfg. Co.*, 138 U. S. 537, 549, 11 Sup. Ct. 396, 34 L. Ed. 997; *Chemical Co.* v. *Meyer*, 139 U. S. 540, 11 Sup. Ct. 625, 35 L. Ed. 247; *Mill Co.* v. *Alcorn*, 150 U. S. 460, 14 Sup. Ct. 151, 37 L. Ed. 1144; *Singer Mfg. Co.* v. *June Mfg. Co.*, 163 U. S. 169, 16 Sup. Ct. 1002, 41 L. Ed. 118; *Elgin Nat. Watch Co.* v. *Illinois Watch Case Co.*, 179 U. S. 665, 21 Sup. Ct. 270, 45 L. Ed. 365; *Bennett* v. *McKinley*, 13 C. C. A. 25, 65 Fed. 505.)

In the leading case of *Shaver* v. *Heller & Merz* Co. (108 Fed. 821, 831, 832) the Circuit Court of Appeals for the Eighth Circuit, speaking through Judge Sanborn, after an exhaustive examination of the authorities, summarized the law as follows:

> From the opinions which have now been reviewed and the authorities cited below the following principles may be safely deduced:
>
> 1. The sale of the goods of one manufacturer or vendor as those of another is unfair competition, and constitutes a fraud which a

court of equity may lawfully prevent by injunction. (*Manufacturing Co.* v. *Spear*, 2 Sandf. 599; *Seixo* v. *Provezende*, 1 Ch. App. 192, 194; *Coats* v. *Thread Co.*, 149 U. S. 562, 13 Sup. Ct. 966, 37 L. Ed. 847.)

2. Geographical terms and words descriptive of the character, quality, or places of manufacture or of sale of articles can not be monopolized as trade-marks. * * *

3. But the use of such geographical or descriptive terms to palm off the goods of one manufacturer or vendor as those of another, and to carry on unfair competition, may be lawfully enjoined by a court of equity to the same extent as the use of any other terms or symbols. * * *

4. A proprietary interest in the terms or symbols used to palm off the goods of one manufacturer or vendor as those of another, or to commit any other fraud, is not essential to the maintenance of a suit to enjoin the perpetration of the wrong; but an interest in the good will of the business or in the other property threatened is sufficient. * * *

This statement of principles was quoted and expressly reaffirmed by that court in *Buzby* v. *Davis* (150 Fed. 275).

The Sixth Circuit in a recent opinion by Judge King (*Trappey* v. *McIlhenny Co.*, 281 Fed. 23, 25) announces the same doctrine with respect to the protection afforded trade names of establishments or goods though geographical or descriptive terms be used, and quoted with approval the following:

> * * * the rule is, that a subsequent trader may not use even common terms or symbols, his own name, or a geographical or descriptive word, in such a manner as to cause his goods to be known in the market by the same name as that by which a prior trader's similar goods are already known and called for by the purchasing public. The trade name for the goods of a particular trader may not be used by another as the trade name for his similar rival goods. The subsequent trader, however, may use such terms descriptively, to tell the truth about his goods, describing them, stating where and by whom they were manufactured and other like matters, because such terms are publici juris in their primary sense, and can not be exclusively appropriated by any one. But use as a name or title is not a permissible use, because by reason of the acquired secondary meaning such a use carries with it a false representation that the goods of that name are those of the prior trader. (38 Cyc. 722, 771, 772.)

The opinions above cited are replete with authorities supporting the conclusions reached.

The facts in some of the cases will now be examined briefly to demonstrate the exact limits to which the courts go to protect trade names of establishments or of goods which are geographical or descriptive and therefore not the subject of exclusive appropriation as trade-marks.

35694—29——4

In the *Shaver case, supra,* the plaintiff had for years made and sold bluing under the trade names "American Ball Blue" and "American Wash Blue." Defendant had for a time sold the plaintiff's goods, but later procured others to manufacture bluing for it which it sold as "American Ball Blue" and "American Wash Blue." The trial court enjoined the defendant from applying the names of plaintiff's articles to the products of other manufacturers. The court of appeals affirmed the decree, pointing out that the injunction did not prevent the company from stating that their product was of American manufacture, or was an American product.

In *Trappey* v. *McIlhenny Co., supra,* the McIlhenny family had for some thirty years sold a pepper sauce labeled "Tabasco Pepper Sauce," the word "Tabasco" being separated from the words "Pepper Sauce" and the condiment being termed "Tabasco." This sauce was made from peppers coming originally from Mexico called Tabasco peppers, but later grown by the McIlhennys in Louisiana. The name "Tabasco" as applied to peppers was geographical in that it was the name of the place or district in Mexico from which the peppers originally came. A rival concern began the sale of a sauce made from Tabasco peppers which they labeled "Tabasco." The Circuit Court of Appeals for the Fifth Circuit, through Judge King, held that the newcomer in the field should be enjoined from using the name "Tabasco" in the name of his prod-

uct, though he could, of course, use the word in stating that his product was made from Tabasco peppers. The exact limitations with respect to the use "Tabasco" placed on the defendant by the decree are shown by the following excerpt from the opinion:

> Upon the whole case, we think that the complainant was entitled to an injunction restraining the defendant from using the word "Tabasco" as the name, or as part of the name, of the sauce manufactured and sold by him. The injunction should go to the extent of preventing defendant from using the word "Tabasco" as the name or description of the sauce manufactured by him, but should not prevent his stating that the sauce is made from Tabasco peppers. (*Baglin* v. *Cusenier Co.*, 221 U. S. 580, 600, 31 Sup. Ct. 669, 55 L. Ed. 863.)
>
> The decree granting the injunction in this case is affirmed, so far as it enjoins the appellants from using the word "Tabasco" as the name of the sauce manufactured by them, or in any manner to designate or describe said sauce, or from using the word "Tabasco" otherwise than to state that the sauce manufactured by appellants is made from Tabasco peppers, said statement to be made in such manner as clearly to distinguish the sauce made by appellants from that manufactured by appellee (p. 28).

This Court denied a petition for certiorari in this case.

The Circuit Court of Appeals for the Third Circuit has held in a recent case, *Photoplay Publishing Co.* v. *LaVerne Publishing Co.* (269 Fed. 730), that though the title "Photoplay Magazine" is descriptive, yet when it has acquired a secondary meaning, a competitor will be enjoined from entitling a rival publication "Photo-Play Journal."

And in *British-American Tobacco Co., Ltd.* v. *British-American Cigar Stores Co.* (211 Fed. 933) the Circuit Court of Appeals for the Second Circuit held that the defendant should be enjoined from using the words "British American" in its corporate name, the terms having been so long used in the plaintiff's corporate name that the public would necessarily be deceived.

The decisions in *Wotherspoon* v. *Currie* (the *"Glenfield Starch Case,"* L. R. 5, H. L. 508), and *Thompson* v. *Montgomery* (the *"Stone Ale Case,"* 41 Ch. D. 35, 50) have been repeatedly approved by this court and are so familiar that they need only be referred to. They seem to us to hold that a trader will be enjoined from using the trade name of a competitor's product, though composed of geographical or descriptive terms, where it has come to mean the product of a competitor—not that he may use an identical name with an explanation. In the *Stone Ale case* the perpetual injunction granted *restrained the defendant from "carrying on the business of a brewer at Stone, under the title 'Stone Brewery' or 'Montgomery's Stone Brewery,'*

or under any other title so as to represent that the defendant's brewery is the brewery of the plaintiffs and from selling or causing to be sold any ale or beer not of the plaintiffs' manufacture, under the term 'Stone Ales,' or 'Stone Ale,' or in any way so as to induce the belief that such ale or beer is of the plaintiffs' manufacture, and from infringing the plaintiffs' registered trade-marks, or any of them."

The injunction in the "*Glenfield Starch*" case restrained respondent, among other things, "*from using the word 'Glenfield' in or upon any labels affixed to packets of starch manufactured by or for him,* and from in any other way representing the starch manufactured by or for him to be 'Glenfield Starch,' and from selling or causing the same to be sold as 'Glenfield Starch,' and from doing any act or thing to induce the belief that starch manufactured by or for him, the respondent, is 'Glenfield Starch' or starch manufactured by the appellants."

In *Juvenile Shoe Co.* v. *Federal Trade Commission* (289 Fed. 57) the Circuit Court of Appeals for the Ninth Circuit held that where the Juvenile Shoe Corporation had built up a business in children's shoes under this name, a newcomer in the field would not be permitted to adopt the name Juvenile Shoe Company in the same business in the same territory.

Decisions of State courts dealing under general equity principles with the use of identical or similar corporate or trade names are in accord with the

opinions above summarized. (*Electric Supply Company* v. *Hess et ux.*, 245 Pac. 27; *Cleveland Opera Co.* v. *Cleveland Civic Opera Association*, 154 N. E. 352; *Computing Cheese Cutter Co.* v. *Dunn*, 88 N. E. 93; *Rodseth* v. *Northwestern Marble Works*, 152 N. W. 885.)

Descriptive or geographical terms used not as trade names of establishments or of goods but as advertising catch words, etc., are protected in that, if they have acquired a secondary meaning as denoting that the goods come from a particular manufacturer, their use by others will be so guarded as to prevent the passing off of their products as those of the original user of the terms. Instances of this sort are found in *Lowe Bros. Co.* v. *Toledo Varnish Co.* (168 Fed. 627); *Rubber & Celluloid Harness Trimming Co.* v. *F. W. Devoe* (233 Fed. 150); *Same* v. *Rubber Bound Brush Co.* (81 N. J. Eq. 419, affirmed 81 N. J. Eq. 519). It has also been held that the trade name of a commodity if descriptive may be used by competitors where the dress of the goods is such that passing off is highly improbable. This was the decision in *Richmond Remedies Co.* v. *Dr. Miles Medical Co., supra.* The case is readily distinguished from those relied on here and from the instant case because of the distinctive dress of the product; but even with this distinction it appears on principle opposed to the cases cited.

Some of the decisions seem to hold that an express intent to defraud must be proved or clearly infer-

able from the circumstances in order to justify an injunction restraining the use of the same or a similar trade name. If this be a condition precedent to such a decree, intentional deception appears here. (*Infra*, pp. 54–59.)

V

Respondent did not use the words "Shade Shop" descriptively, but as a trade name

The court in the instant case appears to have been of the opinion that the respondent used the words "Shade Shop" descriptively. The evidence, we believe, proves the contrary. As shown above, the business was listed in the telephone directory as "Shade Shop"; calls were received over the telephone and business thus transacted in that name. This is manifestly the use of the term as a trade name, not in a descriptive manner.

While the name "Shade Shop" was displayed in a conspicuous manner on two windows, there appeared immediately following it the words "WINDOW SHADES."

The use of these words was descriptive; and they were unnecessary if the name of the business in itself was descriptive. On the other hand, the words "Window Shades" sufficiently advised the public that window shades could be had within.

Furthermore, Sammons' business when he had been located in the same building had been designated as "The Shade Shop" and had become known by that name. Respondent's conduct was intended

to induce the public to believe that the business so known was being continued at the same place.

That the words "Shade Shop" were used as a trade name and not descriptively seems clear.

The courts distinguish between the use of words as a trade name and their use descriptively. Thus, where the plaintiff used the word "Rubberset" embossed on the ferrule of brushes and a competitor used the words "Set in Rubber" in the same place on its brushes, the court said:

> It follows, therefore, that the embossing by the defendant on the ferrule of its brushes of the words "Set in Rubber" is such as would inevitably lead to deception, as the evidence demonstrates that it has, and hence constitutes unfair competition. The words are thus used not descriptively, but as a trade name. (*Rubber & C. H. T. Co.* v. *F. W. Devoe et al.*, 233 Fed. 150, 158.)

So also, where the plaintiff used the word "Beaded" on the label of shoe laces, the label having a gold background with white lettering, and the defendant used the word "Nu-B-Ded" on a white label with gold lettering, the court said:

> The defendant never used the word descriptively, but always as a trade name. (*United Lace & Braid Mfg. Co.* v. *Barthels Mfg. Co.*, 221 Fed. 456, 462.)

And in *Trappey* v. *McIlhenny, supra,* the court enjoined the use of the word "Tabasco" as part of

a trade name but permitted the respondent to use it in a statement that its sauce was made from Tabasco peppers.

VI

Even if the trade name "The Shade Shop" in its primary signification is descriptive where a secondary meaning has attached, a subsequent user will be required to plainly distinguish his establishment

Admitting, arguendo, but not conceding that "The Shade Shop" is primarily descriptive of the place where window shades are sold, nevertheless where the name has come to mean a particular establishment a competitor who thereafter uses it, or a name practically identical with it, will be required clearly and unmistakably to distinguish his place of business from that of the original user of the name. This is so well settled as to hardly require the citation of authorities. The leading case on the point is *Elgin National Watch Co.* v. *Illinois Watch Case Co., supra,* where the geographical term "Elgin" (Elgin, Illinois) was in controversy. Mr. Chief Justice Fuller, who delivered the opinion of this Court, said:

> But it is contended that the name "Elgin" had acquired a secondary signification in connection with its use by appellant, and should not, for that reason, be considered or treated as merely a geographical name. It is undoubtedly true that where such a secondary signification has been acquired, its use in that sense will be protected by re-

> straining the use of the word by others in such a way as to amount to a fraud on the public, and on those to whose employment of it the special meaning has become attached.
>
> * * * * *
>
> But where an alleged trade-mark is not in itself a good trade-mark, yet the use of the word has come to denote the particular manufacturer or vendor, relief against unfair competition or perfidious dealing will be awarded by requiring the use of the word by another to be confined to its primary sense by such limitations as will prevent misapprehension on the question of origin. In the latter class of cases such circumstances must be made out as will show wrongful intent in fact, or justify that inference from the inevitable consequences of the act complained of. (*Lawrence Manufacturing Co.* v. *Tennessee Manufacturing Co.*, 138 U. S. 537, 549; *Coats* v. *Merrick Thread Co.*, 149 U. S. 562; *Singer Man. Co.* v. *June Man. Co.*, 163 U. S. 169 (pp. 673–674).)

After summarizing *Singer Man. Company* v. *June Man. Company, supra, Reddaway* v. *Banham,* L. R. App. Cas. 1896, 199, and *Wotherspoon* v. *Currie, supra,* this Court said (p. 677):

> These and like cases do not sustain the proposition that words which in their primary signification give notice of a general fact, and may be used for that purpose by everyone, can lawfully be withdrawn from

> common use in that sense; but they illustrate the adequacy of the protection from imposition and fraud in respect of a secondary signification afforded by the courts.

In this connection, see also *French Republic* v. *Saratoga Vichy Spring Co.*, 191 U. S. 427, 435; and *G. & C. Merriam Co.* v. *Saalfield*, 198 Fed. 369, 373.

VII

The respondent did not distinguish his place of business and deception of the public followed

The court below was of the opinion that the appearance of the firm name "Hooper & Klesner" in inconspicuous type in display advertising and on his place of business sufficiently distinguished the business. The authorities on the point are directly contrary to the opinion in the case. In *Trappey et al.* v. *McIlhenny Co., supra,* Judge King refers with approval to 38 Cyc. 792, as follows:

> That one's name is added to the trade name is not a sufficient distinction to prevent the probable deception.

The court in that case held that the appearance of the junior company's name on the label on the bottle was not sufficient to advise the public that it was not the product that it was accustomed to buy as "Tabasco."

Rulling Case Law states:

> So it has been decided that one who has put up his wares in a distinctive package is entitled to an injunction against the use by

> a rival of a package indistinguishable in every particular, except the use of the rival's name at the bottom of the package in place of the complainant's. And protection has similarly been accorded to makers of candy and of bread. (26 R. C. L. 887.)

And in *Shaver* v. *Heller, supra,* the court held that the name and residence of the manufacturer on the package was not sufficient to distinguish articles coming from different manufacturers where the same name was applied to the articles.

In the instant case the distinction must be made in the clearest and most unmistakable manner wherever the name "Shade Shop" appears. This is because the goods sold, window shades, are not package goods whose dress or wrappings would serve to advise the purchaser of the source or origin of the goods. The fact that the establishment "Shade Shop" is not the same as the original store "The Shade Shop," must be made to appear on the establishment, in the listings in the telephone and street directories and in advertising. This was not done. Take the case of the sign "Hooper & Klesner" which appeared on respondent's place of business. As will clearly appear from an examination of Res. Ex. 1, R. 389, and Com. Ex. 31 and 32, R. 374–2 and 374–3, this sign was placed over the door at the *corner* of the building, while the sign "Shade Shop" appeared on both the Twelfth and H Street *sides* of the building. For this reason, alone, it would be entirely possible for a prospective purchaser to see

"Shade Shop" without seeing "Hooper & Klesner." Again, the sign "Hooper & Klesner," which appeared over the corner entrance, was not only higher than the "Shade Shop" signs appearing on the Twelfth and H Street sides of the building, but was of an entirely different style, the letters being larger, and raised, and the background being different. And the testimony of the witnesses is that they saw the sign "Shade Shop," but did not see the sign "Hooper & Klesner." (R. 10–15, 16–19, 19–22, 37–46, 47–49, 62–64, 67–69.) Reference has been made to the fact that respondents, after Sammons left them, for the first time caused their business to be listed in the telephone directory as "Shade Shop—Hooper & Klesner." *Infra,* p. 56.

But reference to Com. Ex. 12 and 13 (R. 369) shows that, even though "Hooper & Klesner" did follow "Shade Shop," nevertheless the listing was *above and before* that of Sammons, thus giving respondents a great advantage in this respect, because 60 per cent of Sammons' business was done over the telephone. (R. 205.) Most of the witnesses who testified as to deception (R. 10–15, 16–19, 19–22, 37–46, 47–49, 62–64, 67–69) consulted the telephone directory before endeavoring to find Sammons' establishment. And it must be remebered that, subsequent to respondents' first listings in the telephone directory, the firm name "Hooper & Klesner" was dropped, leaving simply "Shade Shop" (see Com. Ex. 11, R. 56–58, 369), and that the respondents not only made no effort to have "Hooper

& Klesner" restored to its former position following "Shade Shop" (R. 58), but have not requested the telephone company to drop the misleading "Shade Shop," although such a request would have been readily acceded to, if made (R. 60).

Finally, and most important, the complete answer to the position taken by the Court below, namely, that the use of respondents firm name "Hooper & Klesner," in connection with "Shade Shop," was sufficient to prevent the possibility of fraud, is found in the proof that, despite the use of the firm name, which was not always used in juxtaposition with "Shade Shop," the evidence shows that the public has been deceived into believing respondents' establishment to be that of Sammons. (*Infra,* pp. 57–59.)

As has already been shown (*Infra,* R. 51–52), to a substantial portion of the purchasing public, the term "The Shade Shop" meant no one in a personal sense, but simply a place of business. The use of the former partnership name, "Hooper & Klesner," therefore, by the respondents, in connection with their establishment "Shade Shop," did not convey any *new* meaning to those formerly doing business with Sammons, who did not know his identity. For all they knew, it may have signified that the long-time proprietor of "The Shade Shop" had finally decided to disclose his identity. And, in their minds, this long-time proprietor may have been "Hooper & Klesner" and not Sammons. In

this connection, see the testimony of Mrs. Bowie (R. 18–19), Mr. Shelton (R. 40–41), Mrs. Lines (R. 48–49), and Mr. Appleby (R. 253, 258).

Much weight is placed by respondents upon the testimony of the witnesses Blundon (R. 269–271), Williamson (R. 275), and Marceron (R. 293, 297), who, as employees, testified that, in reply to telephone inquiries for "The Shade Shop" after Sammons' departure from Twelfth and H Streets, they informed such inquirers that they were talking to "Hooper & Klesner's shade shop." In view of what has just been said, this was not sufficient to differentiate respondents' business from that of Sammons.

VIII

The Commission has jurisdiction of cases of this class

In the closing paragraph of the opinion the court suggests want of jurisdiction in the Commission in this class of cases, since they involve, in the opinion of the court, controversies between private individuals cognizable in a court of equity and are not of interest to the public.

It is submitted that the Commission has jurisdiction in this and similar cases.

We have quoted above (supra, p. 12) from the decision in the *Gratz case* to the effect that unfair methods of competition cover methods characterized by fraud and deception, and have shown from decisions of this court that the basis of relief in equity in these cases is fraud. The decision of

this court in *Federal Trade Commission* v. *Winsted Hosiery Company* (258 U. S. 483) conclusively establishes that methods characterized by fraud are prohibited by the Act, though no element of restraint of trade or monopoly be present. This has been followed by the various circuit courts of appeals. (*Royal Baking Powder Co.* v. *Federal Trade Commission,* 281 Fed. 744, 752, 753; *Procter & Gamble Company* v. *Federal Trade Commission,* 11 Fed. (2d) 47; *Sears, Roebuck & Co.* v. *Federal Trade Commission,* 258 Fed. 307; *Guarantee Veterinary Company* v. *Federal Trade Commission,* 285 Fed. 853; *Juvenile Shoe Company* v. *Federal Trade Commission,* 289 Fed. 57; *Federal Trade Commission* v. *Balmé,* 23 F. (2d) 615; (C. C. A. — 2); *Winston Company* v. *Federal Trade Commission,* 3. F. (2d) 961; *Armstrong Cork Company* v. *Ringwalt Linoleum Works,* 235 Fed. 458.)

In further support of the Commission's jurisdiction in this class of cases we urge (1) that it has been expressly upheld by at least two United States Circuit Court of Appeals; (2) that the Congress intended to include such cases within the statute as shown by reports and debates attending the passage of the Act; (3) that this class of cases embraces every element found in the cases under the statute decided by the Supreme Court and other Federal courts; and (4) that the foundation of this class of cases at common law was protection of the public.

1. *In Juvenile Shoe Company* v. *Federal Trade Commission, supra,* and in *Federal Trade Commission* v. *Balmé, supra,* the Circuit Courts of Appeals for the Ninth and Second Circuits, respectively, affirmed orders of the Commission in this class of cases.

2. The Committee reports, statements of the chairmen of the committees reporting the bills and the debates show that Congress intended to declare unlawful all unfair methods of competition, and that some, best informed on the subject, were of opinion that this particular method would be included.

The report of the House Conference Committee contains this expression of the intention to reach all unfair methods of competition:

> It is impossible to frame definitions which embrace all unfair practices. There is no limit to human inventiveness in this field. Even if all known unfair practices were specifically defined and prohibited, it would be at once necessary to begin over again. If Congress were to adopt the method of definition, it would undertake an endless task. It is also practically impossible to define unfair practices so that the definition will fit business of every sort in every part of this country. * * * (Rec., 63d Cong., 2d sess., p. 14924; House Rep. No. 1142, p. 19.)

The Senate committee report said:

> The committee gave careful consideration to the question as to whether it would attempt to define the many and variable un-

> fair practices which prevail in commerce and to forbid their continuance, or whether it would, by a general declaration condemning unfair practices, leave it to the Commission to determine what practices were unfair. It concluded that the latter course would be the better, for the reason, as stated by one of the representatives of the Illinois Manufacturers' Association, that there were too many unfair practices to define, and after writing 20 of them into the law, it would be quite possible to invent others * * *. It is believed that the term "unfair competition" has a legal significance which can be enforced by the Commission and the courts, and that it is no more difficult to determine what is unfair competition than it is to determine what is a reasonable rate or what is an unjust discrimination. (Senate Report No. 597, 63d Cong., 2d sess., p. 13.)

The report of the House Committee on Interstate and Foreign Commerce on the bill contains the following language:

> The administration idea, and the idea of business men generally, is for the preservation of proper competitive conditions in our great interstate commerce. (House Report No. 1553, 63d Cong., 2d sess., p. 2.)

Senator Cummins, after specifying "that competition which is designed to destroy competition or eliminate a competitor and to bring about monopoly," added: "Any vicious practice or method in competition that injuriously affects the public wel-

fare, even though not unlawful under the Sherman law" (ib. pp. 11236, 11456, 11529), and when asked to give an example cited a typical case of "passing off." The Senator said:

> The unfairness must be tinctured with unfairness to the public; not merely with unfairness to the rival or competitor. I put now to the Senator from Utah a question. I will give him a case, one of the last cases I tried when I was at the bar. A company was manufacturing soap, and it had taken the trade name of "White Laundry" soap; it had built up a business; and the people were in the habit of calling for this commodity by the name of "White Laundry." A rival sprang up and called its soap "Crystal White Laundry Soap," and it began to occupy the territory formerly held by the first producer, and was making its way pretty rapidly when the first producer filed a bill in equity, claiming that it was unfair competition, because the people who called for the particular article in the ordinary course of trade did not discriminate between the two; that when they called for "White Laundry" and were supplied with "Crystal White Laundry" soap, they did not detect the difference; and that, therefore, the competition was unfair. The meaning of the words "unfair competition" has been laid down in cases of that kind a hundred times. That is one class of cases to which this standard would apply.
>
> * * * * *
>
> I do not say that is so in every instance, but that is the thought in all. We are not

simply trying to protect one man against another; we are trying to protect the people of the United States, and, of course, there must be in the imposture or in the vicious practice or method something that has a tendency to affect the people of the country or be injurious to their welfare. (Cong. Rec., 63d Cong., 2d sess., p. 11105.)

Senator Newlands, in charge of the Senate bill, said:

The Senator objects to the term "public morals" or "good morals" as a test. I think it is a very good test. I think there are certain practices that shock the universal conscience of mankind, and the general judgment upon the facts themselves would be that such practices are unfair.

I do not see much difficulty, when you appeal to the conscience of mankind, in determining what is fair and what is unfair in business practices. I think almost every well-regulated mind can determine it, particularly where you get together five men of capacity and learning and experience and present to them the facts regarding a certain business practice. I see no difficulty about such an organization determining what is fair and what is unfair, and determining it in such a way as to satisfy the universal judgment of mankind, except possibly the parties interested.

I claim, then, that that is a definite standard if the practice is against good morals and against public morals and tends to the

> injury of a competitor unfairly. Then, as to the numerous other things to which an action of tort or an action in equity to restrain can lie, it seems to me where those actions involve competition, where there would be a cause of action by the individual against his competitor, almost all those would be included in the term "unfair competition." (Cong. Rec., 63d Cong., 2d sess., p. 12980.)

Senator Robinson, after specifying the "passing off" of goods and Prof. Stevens's classification, added: "Oppression or advantage obtained by deception or questionable means and which 'normal business men' recognize as unfair" (ib. pp. 11107, 11126–11131), and "every practice which may be held by a court to be unjust, inequitable, or dishonest" (ib. p. 11593).

3. The essential elements of unfair competition at the common law are: (1) the simulation of trade name, dress of goods, or other device of the business; (2) calculated to deceive and defraud the public; and (3) consequent injury to the good-will of a competitor. The basis of the action is misrepresentation by words, symbols, dress of goods, or otherwise. In the *Winsted case* and other cases cited involving false branding, the elements of the offense were: (1) misrepresentation of a commodity; (2) deception of the purchasing public; and (3) injury to the competitior. The cases therefore involve the same elements. It is a circle in which in one case the individual competitor's injury is the

point of entrance or beginning, and in the other, the deception of the public which is done to the injury of one or more competitiors of the wrongdoer. In cases involving misbranding or false advertising, more competitors are injured than in the usual case of unfair competition, but the injury is less direct. The element which is important under the statute, deception of or fraud upon the public, is the same in these cases and in the case of common law unfair competition.

4. It is a mistake to assume that at common law injury to the private right of a competitor was the primary ground of relief from unfair competition, particularly of injunctive relief. On the contrary, some of the courts expressly declare that the public interest is paramount and that relief in private litigation is given primarily to protect the public from probable confusion, deception, and fraud. (*Rosenberg Bros. & Co.* v. *Elliott,* 7 Fed. (2d) 962, 965; *Dodge Bros.* v. *East,* 8 Fed. (2d) 872, 875; *Fischer* v. *Blank,* 33 N. E. 1040, 1041; *Draper* v. *Skerrett,* 116 Fed. 206, 209; *Collins Co.* v. *Paist Co.,* 14 Fed. (2d) 614, 615; *Vick Medicine Co.* v. *Vick Chemical Co.,* 11 Fed. (2d) 33, 35; *Luxor Cab Corp.* v. *Leading Cab Company,* 211 N. Y. Supp. 886; *Ajax Tool Company* v. *Buchalter,* 211 N. Y. Supp. 241; *Royal Baking Powder Company* v. *Royal,* 122 Fed. 337; *Federal Trade Commission* v. *Balmé,* 23 Fed. (2d) 615; *Yale, etc.,* v. *Robertson,* 21 Fed. (2d) 467.)

In *Collins Co.* v. *Paist Co., supra,* the court said:

> The law has a three-fold object in unfair competition cases: First, to protect the honest trader in business which fairly belongs to him; second, to punish the dishonest trader, who is taking his competitor's business away by unfair means; and third, to protect the public from deception.

In a case under the Federal Trade Commission Act, such as the one at bar, the object of the proceeding is directly to protect the public from deception and fraud instead of leaving the public interest to the fortunes of private litigation. Incidentally, the honest trader is protected.

IX

Whether a proceeding by the Commission would be to the interest of the public is an administrative question for determination by the Commission

The use by the court of the phrase "of interest to the public" indicates that it is in doubt whether a "public interest" within the meaning of the statute inheres in this class of cases. If so, we submit that the question whether a proceeding by the Commission would be to the interest of the public is an administrative one to be determined by the Commission before the institution of the proceeding and is not thereafter a subject of controversy either before the Commission or in the courts.

Section 5 of the Trade Commission Act provides—

> Whenever the Commission shall have reason to believe that any such person, partnership, or corporation has been or is using any unfair method of competition in commerce, *and if it shall appear to the Commission* that a proceeding by it in respect thereof would be to the interest of the public, it shall issue and serve upon such person, partnership, or corporation a complaint * * *. (Italics supplied.)

After prescribing the procedure to be followed after the issuance of a complaint, the statute provides, "if upon such hearing the Commission shall be of the opinion that the method of competition in question is prohibited by this act, it shall make a report in writing" and shall issue its order, etc.

It is submitted that the words "if it shall appear to the Commission that a proceeding * * * would be to the interest of the public" confer absolute discretion upon the Commission to determine whether a proceeding shall be instituted, and that this is the only purpose of the provision. If the Commission so determines, it proceeds in the manner prescribed by the statute. If it determines not to proceed, it can not be compelled to do so by mandamus or by other process of the courts, even though it be admitted that the method of competition complained of is unfair. If it proceed, then the only question to be determined by the Commission or by

the courts at the conclusion of the case is whether the method of competition "is prohibited by this act." No question of public interest is involved in the issuance of an *order to cease and desist* from the use of the method, but only the question whether it is unfair within the meaning of the statute. If the method is unfair, then the order, it is submitted, can not be set aside because of the absence, in the opinion of the court, of a public interest in instituting the proceeding. (*People* v. *Ballard,* 134 N. Y. 269; 32 N. E. 54, 58, 59; *Hills Bros.* v. *Federal Trade Commission,* 9 Fed. (2d) 481, 483; *Toledo Pipe Threading Machine Co.* v. *Federal Trade Commission,* 11 Fed. (2d) 337, 342; *Moir* v. *Federal Trade Commission,* 12 Fed. (2d) 22, 28.

X

There is a sufficient public interest in this case

But if it be necessary affirmatively to show a public interest in this case it sufficiently appears. That interest lies in the protection of the public of the District of Columbia from fraud and deception in commerce. The Commission's finding with respect to the deception and fraud upon the public has been referred to. (*Supra,* p. 4–5.) The interest in such a case is not so widespread as in cases where companies do a national business. But in expressly applying the law to the District of Columbia, Congress acted in its constitutional capacity as a local legislature for the District. The business of each

of the companies involved, viewed as local business in window shades, is very substantial. The companies doubtless reach some thousands of persons in Washington; and the interest of the public of the District of Columbia in the subject matter is substantial.

Moreover, the mere number of the purchasing public affected by the use of an unfair method of competition is not controlling as to its illegality. The principle is the same whether many persons or few are deceived and defrauded. To make numbers the test of the validity of the order would require the endless taking of testimony to determine the number deceived in each case.

In one of the two cases thus far reaching the courts involving the legality under the statute of methods of this class the court has been of the opinion that public interest sufficiently appeared. (*Federal Trade Commission* v. *Balme, supra; Juvenile Shoe Corporation* v. *Federal Trade Commission, supra.*)

The practice is one which ought not be permitted to continue, as it is disruptive of business standards; and the protection of the public interest can not be left to the chance correctives provided in suits for the vindication of private wrongs.

CONCLUSION

It is respectfully submitted that the judgment of the Court of Appeals of the District of Columbia should be reversed, and the cause remanded, with

instructions to enter a decree affirming the Commissioner's order, and directing the respondent to comply therewith.

WILLIAM D. MITCHELL,
Solicitor General.
ROBERT E. HEALY,
Chief Counsel, Federal Trade Commission.
ADRIEN F. BUSICK,
Assistant Chief Counsel.
JAMES W. NICHOL,
Special Attorney.

APPENDIX A

SECTION 5 OF FEDERAL TRADE COMMISSION ACT

SECTION 5. That unfair methods of competition in commerce are hereby declared unlawful.

The commission is hereby empowered and directed to prevent persons, partnerships, or corporations, except banks, and common carriers subject to the Acts to regulate commerce, from using unfair methods of competition in commerce.

Whenever the commission shall have reason to believe that any such person, partnership, or corporation has been or is using any unfair method of competition in commerce, and if it shall appear to the commission that a proceeding by it in respect thereof would be to the interest of the public, it shall issue and serve upon such person, partnership, or corporation a complaint stating its charges in that respect, and containing a notice of a hearing upon a day and at a place therein fixed at least thirty days after the service of said complaint. The person, partnership, or corporation so complained of shall have the right to appear at the place and time so fixed and show cause why an order should not be entered by the commission requiring such person, partnership, or corporation to cease and desist from the violation of the law so charged in said complaint. Any person, partnership, or corporation may make application, and upon good cause shown may be allowed by the commission, to intervene and appear in said proceeding by counsel or in person. The testimony in any such proceeding shall be reduced to writing and filed in the office of the commission. If upon such hearing the commission shall be of the opinion that the method of competition in question is prohibited by this Act, it shall make a report in writing in which it shall state its findings as to the facts, and shall issue and cause to be served on such person, partnership, or corporation an order requiring such person, partnership, or corporation to cease and desist from using such method of competition.

Until a transcript of the record in such hearing shall have been filed in a circuit court of appeals of the United States, as hereinafter provided, the commission may at any time, upon such notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any report or any order made or issued by it under this section.

If such person, partnership, or corporation fails or neglects to obey such order of the commission while the same is in effect, the commission may apply to the circuit court of appeals of the United States, within any circuit where the method of competition in question was used or where such person, partnership, or corporation resides or carries on business, for the enforcement of its order, and shall certify and file with its application a transcript of the entire record in the proceeding, including all the testimony taken and the report and order of the commission. Upon such filing of the application and transcript the court shall cause notice thereof to be served upon such person, partnership, or corporation and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree affirming, modifying, or setting aside the order of the commission. The findings of the commission as to the facts, if supported by testimony, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the commission, the court may order such additional evidence to be taken before the commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The commission may modify its findings as to the facts, or make new findings, by reason of the additional evidence so taken, and it shall file such modified or new findings, which, if supported by testimony, shall be conclusive, and its recommendation, if any, for the modification or setting aside of its original order, with the return of such additional evidence. The judgment and decree of the court shall be final, except that the same shall be subject

to review by the Supreme Court upon certiorari as provided in section two hundred and forty of the Judicial Code.

Any party required by such order of the commission to cease and desist from using such method of competition may obtain a review of such order in said circuit court of appeals by filing in the court a written petition praying that the order of the commission be set aside. A copy of such petition shall be forthwith served upon the commission, and thereupon the commission forthwith shall certify and file in the court a transcript of the record as hereinbefore provided. Upon the filing of the transcript the court shall have the same jurisdiction to affirm, set aside, or modify the order of the commission as in the case of an application by the commission for the enforcement of its order, and the findings of the commission as to the facts, if supported by testimony, shall in like manner be conclusive.

The jurisdiction of the circuit court of appeals of the United States to enforce, set aside, or modify orders of the commission shall be exclusive.

Such proceedings in the circuit court of appeals shall be given precedence over other cases pending therein, and shall be in every way expedited. No order of the commission or judgment of the court to enforce the same shall in any wise relieve or absolve any person, partnership, or corporation from any liability under the antitrust acts.

Complaints, orders, and other processes of the commission under this section may be served by anyone duly authorized by the commission, either (a) by delivering a copy thereof to the person to be served, or to a member of the partnership to be served, or to the president, secretary, or other executive officer or a director of the corporation to be served; or (b) by leaving a copy thereof at the principal office or place of business of such person, partnership, or corporation; or (c) by registering and mailing a copy thereof addressed to such person, partnership, or corporation at his or its principal office or place of business. The verified return by the person so serving said complaint, order, or other process setting forth the manner of said service shall be proof of the same, and the return post-office receipt for said complaint, order, or other process registered and mailed as aforesaid shall be proof of the service of the same.

APPENDIX B

STATEMENT OF THE EVIDENCE AND OF INFERENCES DRAWN THEREFROM

Sammons, the party complaining to the Commission, is an individual, and, as such, in 1901, entered into the business of manufacturing and selling window shades, exclusively (R. 23, 106–107), under the name and style of "The Shade Shop." This name is now, and has, at all times since its adoption in 1901, been the name of the business established and carried on by Sammons, and has always been used to single out and identify the business conducted by him. It is not used merely to denote that Sammons makes and sells window shades. Practically all the commercial activities of "The Shade Shop" were carried on under this name—under it, the business had become well and favorably known to a substantial portion of the purchasing public, most of whom were not aware that Sammons was personally identified with it.

Under this name, Sammons advertised his business extensively in the local newspapers, trade periodicals, and telephone directories, and by signs on his place of business; established bank accounts, purchased goods, made out bills, conducted correspondence, and receipted bills that had been paid. Under this name, also, telephone inquiries were made of him, written orders were sent to him for goods, supplies were shipped to him, bills and checks were made out to him, and business houses with whom he had dealings carried his accounts. (R. 5, 6, 10–12, 14, 15, 16–17, 19–20, 21, 23, 24, 25, 27, 31, 32–33, 34–35, 48, 49, 61–62, 65, 67, 71–72, 73, 75, 78–79, 85, 89–90, 93–94, 105, 107, 108, 109–115, 118, 121, 122, 123, 126–127, 128, 132, 133–135, 138, 139, 140, 144, 145–146, 147–148, 149, 151–152, 155–156, 161–163, 173, 175–176, 177, 182–184, 185, 188–189, 191, 196, 197, 203, 208, 209, 210, 212–213,

217, 221, 226–227, 237, 244, 246–247, 253, 254, 258, 274, 306, 308, 343–344, 346, 347, 366–370, 374(1), 375–378, 379–380, 381, 382, 383, 384–385, 386, 387, and 388.)

In this connection the following testimony of Sammons (R. 161–162) is significant:

> Q. During this 15 or 20 years, has there been anybody in the District of Columbia, to your knowledge, who has used the trade name "The Shade Shop" in selling or dealing in window shades in any manner?
>
> A. Never, except myself.
>
> * * * * *
>
> Q. During that time, to your knowledge, have you ever known of anyone, any place outside of Washington and the District of Columbia, or anywhere in the United States, dealing in or manufacturing window shades and trading under the name of "The Shade Shop"?
>
> A. I purchase material from every manufacturer of shade cloth and rollers in America. I have been in their offices and I have interviewed with managers and salesmen. *They have never known in their accounts or never received reply from any firm in the United States with the trade name "The Shade Shop."*
>
> Q. *Other than yours?*
>
> A. *Other than mine.* (Italics supplied.)

There is some evidence which shows that the identity of Sammons was known, his name being used in a number of cases in juxtaposition with "The Shade Shop," and in a few instances by itself. (R. 24, 27, 32, 34, 35, 37, 54, 56, 59, 66, 75, 78, 79, 81, 85, 96, 99, 105, 107, 108, 109, 111, 112–113, 120, 129, 135, 144–145, 146, 152, 153, 184, 198–199, 227, 237, 244, 249, 255, 326, 345, 366, 369–374, 382, 389, 390–392, and 431 (illus.).)

In the Spring of 1914 Sammons suggested to Hooper & Klesner, a partnership in the paperhanging, painting, and decorating business, the desirability of locating at the southeast corner of Twelfth and H Streets NW., and stated that if this firm would rent the premises he (Sammons) would sublease part of the space. They agreed. (R. 5, 132, 188, 305–306.) Sammons' sublease with the then partnership appears as Res. Ex. 6. (R. 390–392.) It will be noted that, in this lease, Sammons as party of the second part, is referred to as

W. Stokes Sammons, *trading as "The Shade Shop,"* and his signature is in the same style. The lease was not a partnership arrangement, and there can be no doubt but that the partnership knew at that time that Sammons was trading as "The Shade Shop." Respondent Hooper left the partnership in October, 1919, and the respondent Klesner continued the business under the old firm name. (R. 342.)

When "The Shade Shop" moved into the premises at Twelfth and H Streets NW., rented by the firm of Hooper & Klesner, Sammons had his trade name, "The Shade Shop," lettered upon two windows, one facing on the Twelfth Street side and the other on the H Street side (R. 5, 78, 89–90, 306), and conducted his business, independently, as before, under the name "The Shade Shop" (R. 306). The signs, by reason of their striking color scheme—white lettering against a green background—were readily discernible by passers-by. (R. 110, 132.) Hooper & Klesner occupied the front and Sammons the rear part of the store (R. 24, 25, 31, 77, 132–133, 189, 306), with a partition between. The partnership continued its business of paperhanging, painting, and decorating, and Sammons his business, "The Shade Shop," always as an independent concern, in the work of manufacturing and selling window shades.

Respondent Klesner testified that there was no competition in the store between Sammons and his firm. "We called him in in every instance, if he was there, to wait on the customers" (of "The Shade Shop"). (R. 362.) Klesner also stated emphatically that "there were not two firms operating in shades there." (R. 362; see also R. 190.) *Sammons' name did not appear anywhere on the windows or building.* (R. 25, 26, 189, 307.)

The business of "The Shade Shop" gradually increased, amounting, in the year 1915, the last year it was located at Twelfth and H Streets, to about $30,000 (R. 252); and rising rapidly in the new quarters at 733 Twelfth Street until it reached the sum of approximately $75,000 to $80,000 in the year 1920 (R. 204, 252). A few days prior to December 1, 1915, Sammons, for reasons not disclosed—with notice to and apparently without objection from Hooper & Klesner (R. 136, 194, 244–245, 251)—moved to four doors down the

street (733 Twelfth Street) from his then location with Hooper & Klesner (R. 193, 204, 307). This removal was made on a Sunday morning, in order to avoid interruption to business, and things were progressing peaceably until Sammons' assistant started to remove from the windows the signs "The Shade Shop," which Sammons had paid for. (R. 137.) At this point, Klesner objected very strenuously, and emphasized his objection by flourishing a revolver. Klesner was arrested and confined, Sammons returning to the premises at Twelfth and H Streets, where he completed the removal of his signs, and moved to his new place of business. (R. 24, 79–81, 93–97, 135–139, 310–311, Com. Ex. 30.)

INTENT TO DECEIVE

After Sammons had changed the location of "The Shade Shop," Klesner and his then partner, Hooper, who were not on good terms with Sammons (R. 215, 281–283, 312, 357), decided to engage at once (F. 29, 141, 343) in the business of manufacturing window shades, and to secure for themselves the trade of this nature which Sammons had developed. Their intention to appropriate to their own use the good will previously built up by Sammons appears from the testimony of Klesner himself (R. 313–314):

> Q. Now, when Mr. Sammons left Twelfth and H Streets, what did you do, so far as the business of window shades was concerned?
>
> A. Why, he had put us in a peculiar position. You remember, he approached us. Previous to him approaching us on Eleventh Street, we were dealing with S. Kann Sons Co., getting our shades there. When he broke his lease with us and moved out, we could not very well keep on dealing with him after that, and in the meantime, Kann Sons had given up their shade shop and we knew of no other place to get shades the way we had previously gotten them made, and *we got together and talked it over and decided to carry on the window-shade business the same as Sammons had done, using the rear part of the store to operate in*, and in that way help to contribute to the rent that he had refused to pay.
>
> Q. Did you consider that the rent, the whole of the $83.33, at that time a burden, or more than you felt you could pay?

A. Yes, indeed. It was far more than we could afford to pay out of our little bit of shade work we were then doing. We felt, *inasmuch as since the public had come there and begin to come there* and as we had tried to get shade work more than we had tried to get before, *and he, being there, naturally would cause other people to know there were shades to be had in that store, we thought we may as well continue and put an extra in there, and try to make it pay that way; as it appeared later on we did make that end of it pay.* (Italics supplied.)

This explanation, while seemingly quite naïve, when viewed in connection with the rest of the evidence, is decidedly unconvincing. In the first place, the partnership Hooper & Klesner, up to this time, had not engaged in the manufacture of window shades (R. 29, 78, 131, 135, 186, 192, 343); they were not listed under "Window Shades" in the commercial section of the telephone directory (R. 51); and there was nothing on their windows, billheads, or letterheads to indicate even that they took orders for window shades (R. 192, 245). It is true that they did take orders for window shades, which they turned over to Sammons; this was a common practice for concerns engaged in business such as theirs, and Sammons did the window-shade work of 90 per cent of the wall-paper men in Washington without his identity being disclosed. (R. 187, 190, 231, 253, 259, 260, 274, 286, 304–305, 306, 362.)

Without authority from Sammons (R. 143, 159), and in order to carry out their expressed purpose, respondents commenced the manufacture of window shades in the workshop formerly used by Sammons, and put as a sign upon their windows the words "Shade Shop," in letters of the same shape, size, and color, with the same background, and in the identical location where Sammons had had his sign "The Shade Shop," the net result being that the premises at Twelfth and H Streets, to all intents and purposes, had exactly the same appearance as when Sammons conducted his business there, the only difference being the removal of the word "The" from "The Shade Shop." (R. 33, 110, 141, 143, 307, 312, 395–396, Com. Ex. 31 and 32, R. 374–2, 374–3; Res. Ex. 1, opp. R. 389.)

They had billheads and letterheads prepared, upon which, according to the testimony of the witness Williamson, there

appeared, for the first time, the words "Shade Shop." (R. 281.) Klesner contradicts this, but also admits (R. 350) that Miss Williamson, as his stenographer, made out the bills, attended to the correspondence, and had charge of his billheads and letterheads.

Another step taken by the respondents was to cause their business—hitherto listed simply under the partnership name "Hooper & Klesner" (R. 51)—to be listed in the local telephone directory as "Shade Shop," with the sublisting of "Hooper & Klesner" following it. It will be recalled that Sammons moved his establishment, "The Shade Shop," from Twelfth and H Streets NW. to 733 Twelfth Street about December 1, 1915. On January 3, 1916, the respondents contracted with the Chesapeake & Potomac Telephone Company (R. 51–53, 59–60, 350) to list their places of business in the local telephone directory, both in the main alphabetical listing and in the classified business listing, as "Shade Shop, Hooper & Klesner." And these listings were inserted in said directories immediately *above* the listings of "The Shade Shop," Sammons' establishment, thus:

Com. Ex. 12, excerpt from p. 253 of the telephone directory of June 16, 1919, referred to on p. 55 of the record, and printed at R. 369:

Main 4763 Shade Shop, Hooper & Klesner-----SE. cor. 12th & H NW.
Main 4874 Shade Shop The, S. S. Sammons, window shds, 733 12th NW.

Com. Ex 13, excerpt from p. 261 of the telephone directory of April 15, 1920, referred to on p. 55 of the record, and printed at R. 369:

Main 4763 Shade Shop, Hooper & Klesner-----SE. cor. 12th & H NW.
Main 4874 Shade Shop The, S. S. Sammons, window shds, 733 12th NW.

While Com. Ex. 12 and 13 refer to the years 1919 and 1920, the listing in these latter years is the same as in the years immediately following the order of January 3, 1916. (R. 60.)

The telephone company, afterwards, in order to eliminate what was considered nonessential matter, dropped the words "Hooper & Klesner" from the previous listing of "Shade Shop, Hooper & Klesner" (R. 56–58), and, allowing for changes of address, the main listings, for both respondents and Sammons, have been:

Com. Ex. 11, excerpt from p. 175 of the telephone directory for the Fall of 1920, referred to on p. 50 of the record, and printed at R. 369.

Shade Shop, 741 12th NW---------- Main 4763
Shade Shop, 830 18th NW---------- Main 4874

Respondents, however, have made no effort to have the firm name "Hooper & Klesner" restored to its original position following "Shade Shop." (R. 58.) Furthermore, they have not requested the telephone company to drop the misleading listing of "Shade Shop," although such a request would have been readily acceded to, if made. (R. 60–61.) The tactics of respondents in thus simulating Sammons' trade name in connection with telephone advertising become of major importance in this case, when it is remembered that 60 per cent of Sammons' business was done over the telephone. (R. 205.)

If respondents had intended embarking in the window-shade business *in good faith*, why was it necessary for them to adopt the name "Shade Shop"—almost identical with "The Shade Shop" of Sammons'? Wouldn't the term "Window Shades" painted on the establishment have served the purpose?

In dismissing the Commission's petition, the Court below remarked (R. 455–456): "In the absence of any showing that defendant was attempting to dispose of his goods under the pretense that they were the goods of Sammons, there is no ground whatever in law or reason for invoking the doctrine of unfair competition"; and "The record is silent as to any attempt on the part of defendant or his employees to deceive or entice Sammons' customers into dealing with him." It is submitted that what has already been said is amply sufficient to support that part of the Commission's findings as to the facts (R. 414–416, par. 7), relative to intention on the part of respondents "to deceive or entice Sammons' customers" into dealing with them.

DECEPTION OF THE PUBLIC

The finding of the Commission with respect to this phase of the case appears on pages 415–416 of the record, and is amply supported.

Customers of "The Shade Shop" have been deceived by the name "Shade Shop," as used by respondents, into buying goods from the respondents instead of, as they intended, from Sammons. (R. 10–15, 16–19, 19–22, 37–46, 47–49, 62–64, 67–69.) None of these instances of confusion is denied by Klesner (R. 331), and he specifically mentions Mr. and Mrs. Bowie, Shelton, Etchinson, Goff, Mrs. Lines, and Wills (R. 331). In spite of the testimony as to respondents' instructions to their sales force, persons desiring to purchase window shades from Sammons' "The Shade Shop," who called at respondents' "Shade Shop," due to the confusion in the names, were *not* advised that Sammons had moved to another location; they were simply told he was "out." (R. 38–39, 67, 69.)

The absence of the word "The" before the name "Shade Shop," the name of the respondents' establishment, gives opportunity for quibbling, mistakes and deception. (R. 19–22, 67.) Customers do not distinguish between the names "*The* Shade Shop" and "Shade Shop." The absence or presence of the word "The" is without significance to them. (R. 18, 20–22, 25, 27, 30–33.)

Sammons testified as to complaints "*once or twice a week*" *for five years* (R. 159–160); also to "many complaints * * * on the telephone" (R. 172).

As already mentioned, *confusion in regard to telephone calls is of peculiar importance in connection with this case, as 60 per cent of Sammons' business is done over the telephone.* Thus, Sammons testified (R. 205), "about 60 per cent of my business is done over the telephone, *and it is the telephone that is the most misleading thing in my business.*"

Another excerpt from Sammons' testimony is interesting in this connection (R. 213):

> Q. Now, Mr. Sammons, at the time while you were on Twelfth Street, 733, did you have any difficulty with the mail service there by reason of the fact that Hooper & Klesner also had on their windows the words "Shade Shop"?
>
> A. I went to the Post Office Department and had a personal interview with the Third Assistant Postmaster General. I put my case up to him, and he favored me, and he said that I was right, and gave

instructions that all mail addressed as "The Shade Shop," or "Shade Shop," should go to 733 Twelfth Street. That was his orders.

Again (R. 243), referring to telephone complaints, he said: "I had several complaints from people calling up that they had been confused in the words 'Shade Shop,' as the telephone book had 'Shade Shop, Twelfth and H Street'—and 'Shade Shop,' either Twelfth or on H Street—what the address was I do not know." When asked about the frequency of these complaints, he answered: "Well, in a period of about four months, at least a dozen."

The witness Blundon, an employee of respondents (R. 262), said: "Those were persons that we *repeatedly* answered over the phone and they did inquire for *The* Shade Shop." The same witness testified that he heard the witness Williamson, respondents' stenographer, *frequently* respond to telephone calls. "As a rule, if anyone called up and says, 'Is this the shade shop,' she always says, 'Shade Shop.'" (R. 265.) The witness Williamson, afterward (R. 275) testified that her reply was "Hooper & Klesner's shade shop."

The witness Williamson testified as to instances of confusion in the mail (R. 277), and, when asked by counsel for respondents as to her conversations with Sammons after the latter had left Twelfth and H Streets, said (R. 285):

> A. He would always come up with me by saying that I had gotten one of his orders.
> Q. What else would he say?
> A. That is all he discussed; I had taken one of his orders; something to that effect.

So also Marceron, respondents' shade cutter: "*I always had been instructed to give the name to a party over the phone as "Shade Shop"* (meaning respondents' place of business). (R. 287.) See also R. 293, 297.

The respondent Klesner himself testified to telephone confusion (R. 315 et seq.), and to confusion in the mail (R. 216).

The facts found were based upon evidence taken (R. 9–404) on the issues raised by the Commission's complaint (R. 1–4) and respondents' answer (R. 4–7), and were embodied by the Commission in its report upon the facts (R. 411–416).

○

FILE COPY

FEB [illegible] 25

CHARLES EL[illegible]

IN THE

Supreme Court of the United States

No. 363 8

FEDERAL TRADE COMMISSION,

Petitioner,

vs.

ALFRED KLESNER, doing business under the name "Shade Shop," Hooper & Klesner,

Respondent.

BRIEF FOR RESPONDENT

CLARENCE R. AHALT,
Attorney for Respondent.

CONTENTS

Page

1. Statement of Case..... 1

2. Exceptions to Commission's Findings..... 6

3. The Law:

Point 1. The words "Shade Shop" are not the subject of appropriation by one to the exclusion of others..... 12

Point 2. There is no real confusion or deception of the public so far as the record discloses and such as has been testified to is insignificant 14

Point 3. He who seeks equitable relief must do so with clean hands..... 16

Point 4. This is a controvery arising between two individuals, competing in trade and does not affect the public interest as contemplated by Federal Trade Commission Act..... 18

4. The Law as applied to the facts..... 25

5. Commission authorities analyzed and discussed 29

6. Conclusion 32

CASES CITED

Brown Chemical Co. vs. Myer, 139 U. S. 54..... 26

Ball vs. Siegal, 116 Illinois 137..... 29

Bender vs. Enterprise Mfg. Co., 176 Fed. 376.... 28

Choynskie vs. Cohen, 39 Calif. 501..... 14

Corbin vs. Gould, 133 U. S. 308..... 14

Del. & H. Canal Co. vs. Clark, 13 Wallace 311....14-25

Deering Harvester Case, 91 Federal 376..... 29

Eggers vs. Hink, 63 Calif. 445..... 29

Elgin Watch Co. vs. Ill. Watch Co., 179 U. S. 664. 28

Fed. Trade Com. vs. Gratz, 253 U. S. 421.....20-25

Fed. Trade Com. vs. Raymond Bros. Clark Co., 263 U. S. 656, 68 L. Ed. 448..... 21

Fed. Trade Com. vs. Sinclair Refining Co., 261 P. S. 463, 67 L. Ed. 746..... 24

Fed. Trade Com. vs. Eastman Kodak Co., 274 U. S. 619, 71 L. Ed. 1238..... 32

Goodyear vs. Goodyear, 128 U. S. 598.....14-26

Howe Scale Co. vs. Wycoff, et al, 198 U. S. 973..15-27

Koehler vs. Saunders, 48 Hun. (N. Y.) 48..... 14

Liggett vs. Finzer, 128 U. S. 182..... 14

McLean vs. Fleming, 98 U. S. 245..... 15

National Watch Co. vs. Ill. Watch Co., 179 U. S. 664 14

Popham vs. Cole, 66 N. Y. 669..... 29

Pacific States Paper Trade Association vs. Fed. Trade Com., 4 f. (2nd) 457..... 24

Royal Baking Powder Co. vs. Fed. Trade Com., 281 Fed. 744..... 23

Standard Paint Co. vs. Trinidad Asphalt Mfg. Co., 220 U. S. 452.....14-28

Waterman vs. Waterman, 235 U. S. 58..... 28

IN THE

Supreme Court of the United States

No. 363

FEDERAL TRADE COMMISSION,

Petitioner,

vs.

ALFRED KLESNER, doing business under the name "Shade Shop," Hooper & Klesner,

Respondent.

BRIEF FOR RESPONDENT

Statement of Facts

The principal complaint made against respondent is that he has used the words SHADE SHOP on a show window on a place of business, and an automobile truck owned and operated by him, and in the Telephone Directory for the City of Washington, in conjunction with his trade name, Hooper & Klesner, in such manner as to confuse, mislead and deceive the general public into the erroneous belief that respondent's place of business was that of one conducted by W. Stokes Sammons, who conducts a similar business under the name of "The Shade Shop."

The testimony shows (pp. 252, 253, 285, 286) that one H. S. Hooper since the year 1904 was engaged in the sale and hanging of wallpapers, decorating, painting and the window shade business, and that during 1909 the firm of Hooper & Klesner was formed by the aforesaid H. S. Hooper and respondent, which succeeded the business theretofore conducted by the said H. S. Hooper (pp. 231, 252, 253, 285, 286 and 304), that during 1919 respondent purchased Hooper's interest in said business and has continued under the name of Hooper & Klesner; that the respondent has at all times traded under the firm name and style of Hooper & Klesner; has never traded with any firm, person or corporation, under any other name; has never stamped his shade goods with the name "The Shade Shop," or "Shade Shop"; that he has never carried the name or words "Shade Shop" on any of his stationery (pp. 293 and 314) by way of advertisement in newspapers or other publications, or signs or otherwise, except in conjunction with or accompanied by the firm name of Hooper & Klesner, which firm name has always been given as great or greater prominence than the words "Shade Shop" (pp. 253, 259, 274, 277, 262, 305, and Respondent's Exhibits 10 and 11).

Some time prior to 1912 the said W. Stokes Sammons began a window shade business in the City of Washington and placed on his stationery and by way of signs on his building, the words "The Shade Shop." During the year 1911 Sammons appealed to one Luther L. Derrick, who was engaged in the paperhanging, painting and decorating business and the sale of window shades, for financial help, and an agreement was reached between Derrick and Sammons whereby Der-

rick purchased and paid for all materials to be used in the business of "The Shade Shop," collected all bills (pp. 225, 226, 236), and whereby said Sammons was to perform the manual labor, make weekly reports to Derrick for work done and collections made in consideration of which the said Sammons was to receive a weekly salary of $20.00, and 10% of the net proceeds derived from said business (pp 174, 224) and Respondent's Exhibits 3, 4, 5 and 7); that the latter part of 1912 Derrick leased a building at 819 15th Street, Northwest, and housed his paperhanging, painting and decorating business on the first floor and assigned to "The Shade Shop" the second floor (pp. 225, 226), and "The Shade Shop" was moved to 819 15th Street, Northwest, and remained there until May, 1914.

While "The Shade Shop" business was at 819 15th Street, N. W., the business was advertised with a big sign across the front of the building (p. 227) "The Shade Shop" and there was no mention of Sammons' name by way of signs on the building, and the only instance in which his name appeared was on stationery where it appeared in the capacity of Manager (Commission's Exhibit 57) and during all this time Derrick's bookkeeper kept all the accounts, attended to correspondence, banked in Luther L. Derrick's name all the receipts from the business and Luther L. Derrick paid all bills incurred in the business and used his credit (p. 226; Sammons 122, 179).

In May, 1914, Sammons and Derrick dissolved the aforesaid agreement and Sammons entered into a lease with the firm of Hooper & Klesner, respondent, for a part of the storeroom situated at the corner of 12th and H Streets, N. W., and until November, 1915, conducted therein a window shade business under the

name of "The Shade Shop," W. Stokes Sammons, 'roprietor, at which latter time he breached his lease with respondent and moved his business to a storeroom located two doors south of H Street on Twelfth Street (No. 733) and where simultaneously there was opened "The Decorative Shop, " a wall paper and decorating business in competition with respondent (p. 308).

Neither respondent nor his employes have ever done anything intentionally or otherwise to deceive the public into the belief that respondent's place of business was that of W. Stokes Sammons, but on the contrary he gave specific instructions to his employes to inform all persons inquiring for said Sammons that his was not Sammons' place of business (Blundon 262, 263, 267, 270; Williamson 275; Marceron 287, 297; Klesner 316). It also appears that said instructions were strictly followed and that numerous persons who inquired for Sammons were directed to his place of business (Blundon 261, 262, 268, 269; Marceron 293).

That within a few days after Sammons moved to 733 12th Street, N. W., he instituted, without prior complaint or notice to respondent, a suit in the Supreme Court of the District of Columbia, seeking to enjoin respondent from using the words Shade Shop on his windows and claimed exclusive use of said words as his trade name, which suit, after hearing and argument on bill, rule to show cause and answer, the rule to show cause was discharged (Respondent's Exhibit 7) which suit remained dormant on the docket until May 24, 1920, when it was dismissed and December 18th, 1920, this proceeding was commenced by the Federal Trade Commission.

Respondent moved from 12th and H Streets a few

months after this proceeding was instituted, to 929 H Street, Northwest. Respondent's Exhibit 8 shows the character of signs on this location and nowhere do the words "Shade Shop" appear at that place of business (p. 327), except the words "Shade Shop" appear on the curtain of an awning (see photo p. 426 filed with the petition to this Court for the enforcement of the Federal Trade Commission's Order). The advertisement running in the classified department of the Telephone Directory (p. 428) carries very plainly the name of Hooper & Klesner, and could not be confused. The Telephone Company's representative (Hunt pp. 55, 56) testified that the listing of the words "Shade Shop" alone in the main body of the Telephone Directory was the result of the Telephone Company's recasting of its Directory and was without the request, knowledge or consent of respondent.

When Sammons moved to 733 12th Street, Northwest, he financed the Decorative Shop, which was opened in the same building with his Shade Business (two doors below respondent's then place of business) (pp. 205, 206, 207) and he had an interest in the profits, waited on the trade, took orders for paperhanging, painting and decorating and there was nothing on the building or place of business to indicate to the public that the Shade Shop and the Decorative Shop were under different ownerships and managements, and after some twelve months or thereabouts Sammons sold the business of the Decorative Shop (p. 207).

Ninety per cent of the supposed confusion testified to by Sammons while at 733 12th Street, N. W., was to a "considerable extent" due to the fact that his (The Shade Shop) business was so closely located to that of respondent's (Sammons p. 205).

Witnesses produced by respondent, among whom were Charles A. Appleby and Russell B. King, persons engaged in the real estate business, in this city, and having occasions to purchase shades, describe the character of signs on the building, and were not confused or deceived (pp. 252, 258). King testified (p. 259) that he often had occasion to call by telephone both the place of Sammons and Hooper & Klesner concerning shades and was asked, "Did you have any difficulty in finding their (The Shade Shop) name in the Telephone Directory?" Answer, "No." Appleby said (p. 258) he did not consider the signs on respondent's place confusing or similar. Blundon testified (p. 262) that there has been no confusion since respondent and Sammons were on 12th Street and he only recalls two persons who made inquiry for Sammons at the 12th Street address and they were directed to Sammons' place; Klesner (p. 315) heard no complaints of confusion.

ARGUMENT

Exceptions to the Commission's Findings of Fact, Which Are Not, As Disclosed by the Record, Supported by a Fair Preponderance of the Evidence

It is contended that a *fair, unbiased consideration* of the evidence as disclosed by the record will not justify the findings as to the facts as made by the Commission, to which exception was taken.

Commission's Findings Analyzed

Paragraph 1 *finds* that the respondent is "Doing business under the trade name and style of 'Shade

Shop—Hooper & Klesner','' when in fact nowhere in the record is there one scintilla of evidence that such is the case, but on the contrary the undisputed testimony is that he trades and does business under the firm name of HOOPER & KLESNER (Sammons p. 203; Derrick 231; Appleby 253; King 258; Blundon 262; Williamson 273, 274, 277; Marcevon 286, 293; Klesner 303.)

Paragraph 2 finds that Sammons adopted the name The Shade Shop in the year 1901 and has continuously up to the present used such as a trade name. (The complaint filed only claims from 1907.) This finding is based entirely upon the testimony of Sammons, and a perusal of his testimony, at most any part under cross-examination will disclose that he contradicts himself consistently and is most evasive of pertinent questions and would have us believe that he is unable to understand questions propounded to him (pp. 161 to 223 and 243 to 251). Yet Sammons testified (pp. 243 and 244) concerning the use of the words ''Proprietor'' and ''Manager'' following or in conjunction with ''The Shade Shop,'' and that he ''Did not know who the 'Shade Shop' rating belonged to in the credit rating * * *'' and that it was on the suggestion of his banker when he went into business at 12th and H Streets in 1914, ''* * * that I should style my business as 'The Shade Shop'.'' Derrick testified (pp. 237) ''he (Sammons) used his own name'' for probably a year or two before he and Sammons made agreement in 1912. Then Derrick testified that while at 724 11th Street, N. W., and 819 15th Street, N. W., he financed the business and took 90% of the profits (pp. 224, 237, 238) (Respondents Exhibit 3-5, pp. 389-390); paid all bills payable and collected all bills re-

ceivable, and paid Sammons a weekly salarly of $20.00, and 10% of the net profits, and Derrick assigned the second floor to The Shade Shop at 819 15th Street, a building he had leased, so as to have the business under the same roof with his paperhanging and decorating business and maintained on said building a sign "The Shade Shop" (p. 227). Derrick only knew Sammons to be trading under such a name for a couple years prior to his taking over the business at 724 11th Street in 1911 (p. 237).

Paragraph 3. The *finding* that Sammons had traded as "The Shade Shop" for the number of years and at the places mentioned, is predicated entirely upon Sammons' statement; the Commission's complaint filed claimed and charged that Sammons only used this name since 1907; Derrick did not know that he was (p. 237) so trading all these years, and no one else was produced. It is submitted further that the arrangement and contract with Derrick in effect at 724 11th Street and 819 15th Street, caused a hiatus in any term during which Sammons claims he so traded.

Paragraph 4. Exception is taken to the finding that all during the time alleged Sammons traded under the name The Shade Shop, for reasons previously assigned, under paragraph 3 hereof, and it is submitted that the *finding* that The Shade Shop, to the public has come to and does mean the place of W. Stokes Sammons, is a conclusion and is not supported by evidence.

Paragraph 5. The *finding that* "Respondent, Alfred Klesner, was not and never had been engaged in the business of manufacturing or dealing in window shades, other than receiving occasional orders given his employes, etc.," is not even a *fair* statement of the facts. Again this finding is based upon Sammons' un-

supported statement, and of course he would be expected to so minimize respondent's business in shades. Appleby, connected with a large real estate firm, testified (p. 253), "We have been doing business with Hooper & Klesner * * * from about August, *1904*, we gave Hooper & Klesner, Harry S. Hooper, the first shade order. That is the first shade order I had with Hooper, and right along after that more and more until eventually Hooper & Klesner came to get all our work in shades." And further this witness testified (p. 256) that Hooper & Klesner had done the shade work for his firm, representing and handling apartment houses and other properties, for all his clients. Marceron (p. 286) testified that he had known Hooper when he was in business for himself (prior to 1909) and that Hooper was then selling window shades. Williamson testified (p. 273) that she was with Hooper & Klesner since they were on 11th Street. Derrick testified (p. 230) that he had known Hooper & Klesner since they were on 11th Street and that they were "making shades and painting and hanging paper," and Sammons (p. 130) testified he had "considerable business with Hooper & Klesner during 1910 (when on 11th Street) to 1914, and that "Eighty per cent of wall paper men do shade business" (p. 131), and while on 11th Street respondent gave him orders for making and hanging shades for respondent's customers (p. 186). Klesner testified (pp. 304, 314) that he had been engaged in the window shade business since 1909, and that Hooper, his predecessor, had previously been engaged in the window shade business, and that he had done business with Sammons, dealing in shades while both of them were on 11th Street in the 700 block. Klesner (p. 333) said Sammons hung

shades at one building for him "a hundred times." Notwithstanding all this testimony the Commission FINDS that they had not been engaged in the shade business prior to 1912, except to the extent of an occasional order.

Paragraph 6. The Commission finds that Sammons' business had been built up to a gross annual sum of $60,000.00 at 12th and H Streets, when in fact Sammons himself testified (252), "Q. You are positive that in round figures, it was $30,000 the volume of business the last year that you were at 12th and H Streets? A. Yes, sir. Q. Since that time it has jumped to $60,000, $75,000 or $80,000? A. It has." The further finding as to the episode in the place at 12th and H Streets, one Sunday morning follows almost literally the version of Sammons, and disregards the explanation and version of Klesner. See Klesner's testimony (pp. 310 to 313).

Paragraph 7. The *findings* in this paragraph are plainly favorable to Sammons and unnecessarily inject into the findings and record charges of malice and hatred on the part of Klesner for Sammons; yet the findings totally ignore any reference to the suit with Sammons, only a few days after leaving 12th and H Streets, N. W., instituted in the Supreme Court of the District of Columbia, without prior complaint or notice to respondent, in an attempt to enjoin the use of the words Shade Shop on the windows of the place of business of Klesner, and his manifest attempt to harass, annoy and embarrass Klesner (Respondent's Exhibit 7; Klesner p. 336) and also ignore testimony by Sammons (pp. 205, 206, 207) to the effect that he financed the opening of a "Decorative Shop" in competition with Klesner, doing paperhanging and paint-

ing, at the time he moved to 733 12th Street, N. W., and housed it in the same place, shared in the profits, waited on customers, and finally sold it to another firm. *In finding* that respondent used the words "Shade Shop" on his stationery they take the confused statement of Williamson under cross-examination (p. 281) and ignore her original testimony (p. 277) and ignore Marceron's testimony (p. 293) that no such use was made, and ignore Klesner's testimony (p. 314) denying any such. The *finding* as to the words "Shade Shop, Hooper & Klesner" on respondent's truck is based upon Sammons' testimony, unsupported again, and no mention is made of the testimony even by Sammons that the words "Wall Papers" "Painters" also appeared thereon. The FINDING in this paragraph that persons have been deceived by the use of the words "Shade Shop" on the windows at 12th and H Streets, since Sammons left, does not take into consideration the fact that practically every witness produced by the Commission admitted that they walked into the place, blindly, so to speak, without observing the name of Hooper & Klesner (Bowie p. 17, 18; Goff p. 20; Shelton p. 40; Lines p. 49; Wills pp. 69, 70) in large letters over the door and that the thing mostly in view was that of wallpaper, and made no complaint to Klesner and was satisfied with the transaction; nor does this finding give any credit to the testimony of Marceron, Blundon, Williamson or others, wherein they testified (pp. 262, 263, 270, 274, 293, 316) that they invariably informed persons calling there and inquiring for Sammons, that this was not Sammons' place but was Hooper & Klesner's Shade Shop, pursuant to instructions of Klesner, and had in many instances directed them to Sammons' place.

A careful consideration of the testimony in this case will convince the Court that the FINDING is grossly partial to Sammons, whose testimony it is suggested is of a most unsatisfactory character, highly contradictory (pp. 172 to 223, pp. 243, 252), absolutely biased and prompted, naturally, with interest in the outcome of the case, while there is not a SINGLE reference made to any evidence adduced by respondent which would have the slightest tendency to place him in a favorable light for consideration, but on the contrary the finding as a whole would indict him as almost a scoundrel. It is respectfully submitted that the finding is not supported by a fair interpretation of the testimony, is biased, partial, unfair and unjust, and respondent takes exception to such findings as a whole and submits they are not supported by such evidence as is contemplated under the law.

POINT NO. 1

The Words "Shade Shop" Are Not the Subject of Appropriation by One to the Exclusion of Others

The Commission's brief claims that this is a case of unfair competition and that the unfair competition by the respondent Alfred Klesner *consists* of his adoption and continued use thereafter of a trade name, to-wit, SHADE SHOP, almost identical with the trade name, to-wit, "The Shade Shop" previously adopted and used by W. Stokes Sammons, who is the complainant before the Commission. The complaint (pp. 1 and 3) and the order (p. 416) are to the effect that the use of the words Shade Shop by respondent constitutes unfair competition.

Therefore, the principal question involved here is

whether Sammons is entitled to the exclusive appropriation of the words "Shade Shop." It is contended by the respondent that Sammons cannot appropriate these words to the exclusion of all others, and the Commission cannot go beyond the scope of its complaint and order.

It should be borne in mind throughout this case that the Commission does not claim that these words "Shade Shop" are arranged in any particular manner or form any fanciful design. It should also be borne in mind that it does not claim that Sammons stamps his goods with this trade name or that respondent stamps his goods with the words "Shade Shop."

These words are strictly descriptive and therefore cannot be appropriated by one as a trade name to the exclusion of others any more so than the words Umbrella Shop, Book Shop, Violin Shop, Millinery Shop, Print Shop, Candy Shop, etc., etc., which describes the character of business or kind of goods to be had in a place bearing such words.

Sammons' own idea as to the meaning of the words "Shade Shop" and what they convey to the public is that it is a place where shades are manufactured, as distinguished from a place where ready-made shades can be purchased (p. 222) and no other words will convey the same meaning to the public; that he so intended to convey this meaning when he first adopted the name "The Shade Shop" (pp. 162, 163, 164, 168, 169) and that many places of business resort to the names Print Shop, Umbrella Shop, Violin Shop, Candy Shop, Book Shop, Corset Shop, etc (p. 162).

The law dealing with trade names is very well settled and it is needless to say more than that such words as are strictly descriptive cannot be appro-

priated by one as a trade name to the exclusion of others.

Goodyear vs. Goodyear, 128 U. S. 598,
Del. & H. Canal Company vs. Clark, 13 Wallace
Standard Paint Co. vs. Trinidad, 220 U. S. 452,
National Watch Co. vs. Ill. Watch Co., 179 U. S., 664,
Koehler, et al. vs. Sanders, 48 Hun. (N. Y.) 48,
Choynski vs. Cohen, 39 Calif. 501.
Corbin vs. Gould, 133 U. S. 308,
Liggett vs. Finzer, 128 U. S. 182.

The State cases cited by the Commission in support of its contention are cases in which there was a manifest attempt on the part of the defendants to deceive the public and to palm off their goods for those of another and the evidence before the Court was decidedly stronger than that which can be found in the records here.

POINT NO. 2

There Is No Real Confusion or Deception of the Public So Far as the Record Discloses and Such As Has Been Testified to Is Insignificant

A careful analysis of the testimony of the various witnesses produced by the Commission to testify concerning their supposed confusion will disclose (pp. 17, 18, 19, 40, 49, 69) that none of the witnesses used ordinary diligence or intelligence in seeking out Sammons' place or manifested a reasonable degree of intelligence on entering the place for the transaction. All of them testified in substance that they walked into the place of respondent without observing the character of signs displayed on the building, among which

were large signs (Commission's Exhibit, p. 389) of "Hooper & Klesner," "Wallpapers" and "Painters," and within which place of business the principal thing in sight was wallpapers, made known their wants, had them supplied and were satisfied and never thereafter complained to respondent of any confusion.

In the case of *McLean vs. Fleming*, 98 U. S. 245, the Court said:

> "A Court of Equity will not interfere when ordinary attention by the purchaser of any article would enable him at once to distinguish the one from the other,"

and in the case of *Howe Scale Company vs. Wycoff*, 198 U. S. 973, the Court reiterated the doctrine that the Courts would not interfere and enjoin the use of the name similar to that of the complaining party, although great loss might be sustained and notwithstanding that the public might, of *its own oversight or lack of prudent observation*, be occasionally deceived.

Ninety per cent of such confusion as did exist, according to Sammons' own statement was while he was at 733 12th Street (which should be borne in mind is just two doors below that of the place of business of respondent and a location selected by him), and was "to a considerable extent" due to the fact that his and respondent's place of business were so closely located to each other (Sammons p. 205).

The record does not disclose any confusion between Sammons and respondent's place of business since Sammons left 733 12th Street and respondent moved to 929 H St. N. W.

It is quite evident that the supposed confusion has not injured in any manner Sammons' business. He

claims (p. 252) that his business jumped from $30,000 annually in the last year at 12th and H Streets to $75,000 and $80,000 at present.

During the taking of testimony respondent moved to a building purchased by him at 929 H Street, Northwest, and nowhere on the building appeared the words "Shade Shop" at that time (p. 327, on p. 400 Respondent's Exhibit 8). Since that time the words "Shade Shop" have appeared alone only in the Telephone Directory in the main listing; in the classified section of said Directory juxtaposed with the name of the firm Hooper & Klesner, in bold letters, and on the apron of an awning (used only in the summer season) on the front of the store (see p. 426) where it can hardly be seen. The listing in the main part of the Telephone Directory, it should be borne in mind, wherein the words "Shade Shop" stand alone with the telephone number, came about by reason of the business policy of the Telephone Company, without the request, knowledge or consent of respondent (Hunt pp. 55, 56).

Appleby (pp. 252-258), King (p. 259), Klesner (p. 315) deny any confusion in the name.

POINT NO. 3

He Who Seeks Equitable Relief Must Do So With Clean Hands

In the findings by the Commission there has been injected a charge of malice on the part of respondent toward Sammons. It is evident from the record that considerable ill feeling has existed between Sammons & Klesner, since Sammons breached his lease and left 12th and H Streets, and moved two doors below to 733 12th Street. Klesner's version of the episode of

the Sunday morning following (pp. 310 to 314) and Sammons version of this affair differ materially.

Sammons' manifestation of his intent to harass, annoy, and embarrass Klesner can be found in Respondent's Exhibit 7, and the fact that almost immediately upon leaving 12th and H Streets, Sammons instituted, without any notice to Klesner (p. 336), a suit in the Supreme Court of the District of Columbia to enjoin respondent from the use of the words "Shade Shop," and charged that he had suffered great loss and irreparable damage because of respondent's use of such words, when as a matter of fact only a few days had elapsed between his leaving and the date of the suit. The rule to show cause laid upon respondent was discharged on bill, return, answer and argument of counsel. It is strange, to put it mildly, that the bill of complaint was removed from the files between the date of respondent's answer to the Commission's complaint and the hearing (p. 300). This case remained on the docket for about five years and was dismissed May 24, 1920, only a short time before Sammons resorted to the Federal Trade Commission and had a complaint issued in an endeavor to accomplish that which he was denied in the courts. The record discloses Sammons' vindictive and malicious spirit and a careful scrutiny of his testimony (pp. 205, 206 and 207) will evince the court that in truth and fact he was the real owner, instigator and proprietor of the Decorative Shop and will force a conclusion of a deliberate attempt on his part to harass, annoy and oppress respondent and injure him in his business by opening a business in competition with respondent a few doors below, and put him to great expense. It is respectfully submitted that in this proceeding, Sam-

mons is but furthering that intent at the expense of the United States Government and without cost to him. It should be borne in mind that Sammons made no complaint of the use of the words "Shade Shop" by Luther L. Derrick when he used the term or words Derrick's Shade Shop (p. Derrick 230 and 231; Sammons 161, 185), or others who were and still are using the words Shade Shop with their names, in Washington, D. C., of which facts the Court will take judicial notice.

POINT NO. 4

This Is a Controversy Arising Between Two Individuals, Competing In Trade, and Does Not Affect the Public Interest, As Contemplated by the Federal Trade Commission Act

Section 5 of the Federal Trade Commission Act provides—

> "That unfair methods of competition in commerce are hereby declared unlawful," and
> "The Commission is hereby empowered and directed to prevent persons, partnerships, or corporations * * * from using unfair methods of competition in commerce."
>
> "It is further provided that—
> "Whenever the Commission *shall* have reason to believe that any such person, partnership, or corporation has been or is using any unfair method of competition in commerce, AND if it shall appear to the Commission that a proceeding by it in respect therof *would be to the interest of the public*" * * *

the Commission shall institute a proceeding in the manner prescribed. It is then further provided that, if the person, partnership, or corporation proceeded against fails or neglects to obey the Commission's order made after such proceeding, the entire case may be removed from the Commission's jurisdiction to the Circuit Court of Appeals; and the court is, in the plainest of terms, clothed with

> "* * * jurisdiction of the proceeding *and of the question determined therein,* and shall have power to make and enter *upon the pleadings, testimony, and proceedings* set forth in such transcript a decree affirming, modifying, or setting aside the order of the Commission. *The findings of the Commission as to the FACTS, if supported by the testimony, shall be conclusive.*"

The language of the Act, we respectfully submit, is perfectly plain and unambiguous; and its meaning is: (1) that the Commission *must* have reason to believe that a person, partnership, or corporation has been or is using unfair methods of competition in commerce; *and* (2) that it *must* further appear to the Commission that a proceeding by it "would be to the interest of the public." If those two things do not concur in the minds of the Commission before the proceedings, or are not proved by the testimony taken therein, then any action the Commission may take is clearly beyond its jurisdiction. We feel that the true and correct construction, and the thing meant by Congress in the enactment of the Federal Trade Commission Act is: That the Commission should use its offices to prevent unfair methods of competition in cases affecting the public interest only; and should not attempt to control the conduct of

individual business men not affecting the public. Such individuals are plainly left to their remedies in the courts. Federal Trade Commission Act was meant to supplement the earlier legislation governing unlawful combinations, the regulation of commerce, trusts and monopolies; and the Commission was never meant to have, and has not been given, jurisdiction except in cases where the public interest is affected by actions and conduct not specifically covered and denounced by the former acts. One searches in vain for anything in the Federal Trade Commission Act which expressly, or by necessary implication, deprives the appropriate courts of jurisdiction over two tradesmen in respect of the conduct of their business, where the interests of the public are not injuriously affected.

The foregoing contentions are supported by numerous authorities, among which are the following:

The leading case of *Federal Trade Commission v. Gratz*, 253 U. S., 421, 64 L. Ed. 993, is authority for the proposition that, under the Act, the courts must look to the preliminary action of the Commission, to its complaint against an alleged violator of the law, as well as to the evidence; and, if it be found from the complaint that no action is warranted, or from the evidence that the Commission acted without jurisdiction, then its findings and order are to be reversed. The court said, in part:

> "The words, 'unfair methods of competition' are not defined by the statute, and their exact meaning is in dispute. *It is for the courts, not the Commission, ultimately to determine, as matter of law, what they include.* They are clearly inapplicable to practices never heretofore regarded as opposed to good morals because characterized by

deception, bad faith, fraud, or oppression, or as against public policy because of their dangerous tendency unduly to hinder competition or create monopoly. The act was certainly not intended to fetter free and fair competition as commonly understood and practiced by honorable opponents in trade."

This court may, therefore, consider the entire record certified to it and say whether the Commission acted with or without jurisdiction. It is just as much a question of jurisdiction whether it be noticed in the "pleadings" (complaint) or in the testimony; and if jurisdiction is wanting, it is the court's duty to notice and act upon it at any stage of the proceeding. If, as we contend, this is purely a dispute between Hooper & Klessner on the one hand and Sammons on the other as to the right to use the name "Shade Shop," or "The Shade Shop," one to the exclusion of the other, and the interests of the public are not injuriously affected, then it is for the court to say whether the action of the Commission in passing the order here in question was within its jurisdiction. We say the testimony shows no injury to the public, and that the parties should be left to the courts, where Sammons originally asserted his complaint against Klessner, and later abandoned that procedure for the easier and, perchance, the less costly one, to him, before the Commission.

In the case of *Federal Trade Commission v. Raymond Bros. Clark Co.*, 263 U. S. 565, 68 L. Ed. 448, this court, through Mr. Justice Sanford, said in part:

"We pass, without determination, the preliminary contentions of The Raymond Company that

the findings of the Commission are not supported by the testimony in many respects, and that, as both the complaint and the findings of facts relate merely to a controversy between it and a single manufacturer, over a single shipment of merchandise, the broad order of the Commission ordering it to cease and desist from all acts of like character with the 'entire commercial world' is improvident and cannot be sustained.

"The gravamen of the contention in behalf of the Commission is that the conduct of the Raymond Company, acting alone and not in combination with others, in threatening the withdrawal of patronage from the Snider Company if it continued to sell goods to the Stores Company, constituted an unfair method of competition, oppressive in its character, unlawful when tested by common-law criteria, and having a dangerous tendency unduly to hinder competition."

In this connection it is to be noted that this respondent is attempted to be prevented from using the name "Shade Shop," standing alone or in conjunction with any other words; and this notwithstanding the record is clear that the trade name "Hooper & Klessner" is always given greater prominence than the former. (See cease and desist order and exhibits.)

In the case at bar there is no element whatever of a monopoly or of an attempt to acquire one. In short, as appears from every part of this record, the whole controversy had its very inception and being in the personal grievances and antagonism of W. Stokes Sammons, the respondent's business rival, whose battle the Commission has so generously sought to fight at the expense of the Government; and it is equally clear that the public is not injuriously affected by the respondent's conduct.

In the case at bar, we submit the Commission has shown no right to determine, much less to interfere with, the right to the use of the name "Shade Shop," or "The Shade Shop," as between Sammons and Klesner; and, its attempt to do so is beyond its jurisdiction.

The case of *Royal Baking Powder Co. v. Federal Trade Commission*, 281 Fed. 744, holds that the intent of the Federal Trade Commission Act is the *prevention of injury to the general public.*

Is not the Federal Trade Commission in this case simply attempting to inject itself into the affairs of two rival commercial concerns in respect of a course of conduct which, at the common law, was not recognized as improper? Of course, if there were evidence in this case that respondent was "palming off" his goods as those of his competitor, or false and improper labeling, or that he is conducting his business in such manner as to mislead the purchasing public, despite the exercise by it of reasonable powers of observation, a different situation might exist; but here there is no proof whatsoever that any such practices exist or that there is any excuse for the public to be mislead or deceived, the argument of the Commission and its authorities dealing with "palming off" to the contrary notwithstanding.

It is thus clearly demonstrated that the Commission has a very limited authority, and that its every action is subject to the review, correction, and control of the court. It may not act as a court of equity in respect of matters or disputes between two individuals, as it here seeks to do. Were it otherwise, the Commission would successfully do what it has always tried to do, enlarge and broaden its powers, by interpretation, until it

would oust the courts of their jurisdiction in practically all matters involving commercial conduct and pursuits. The Commission had no jurisdiction, under the law, and it is this court's duty to say as much. If we correctly read and understand the Commission's brief, it is contended that the determination of the question of jurisdiction, both primarily and finally, is merely an administrative matter over which this court has no control; and that such determination by the Commission must stand, although the action of the Commission be to ursurp the powers and functions of a court of equity. In the Federal Trade Commission Act Congress has plainly declared, and the courts have as plainly construed, the Commission's power to be administrative merely; and that its every action may be reviewed by the court. Of course such review is provided for the plain purpose of preventing abuses and usurpation of power.

In the case of *Pacific States Paper Trade Association v. Federal Trade Commission*, 4 Fed. 2d. 457, the Commission passed an order which, among other things, attempted to prevent the trade association from "discussing uniform terms, discounts, and prices, or employing any similar device tending to affect prices." The court held that, while the making of agreements between dealers for the fixing of prices might be prohibited, the order of the Commission attempting to prohibit *discussing* such matters was beyond the power of the Commission. The court adverted to, and followed, the case of *Federal Trade Commission v. Sinclair Oil Co.*, 261 U. S. 463, and said: "In this respect we think the order goes too far," and added * * * "nor was it the purpose of the statute to reduce trade organizations to the

status of mere social clubs, or to restrict the conversation of members to mere idle gossip." This case is but illustrative of the numerous matters of commercial business into which the Commission has obtruded itself in quest of things over which to assume jurisdiction, and to usurp the powers and functions of the courts.

THE LAW AS APPLIED TO THE FACTS

The act does not enlarge or change the definition of unfair methods of competition as laid down by the Courts prior to its enactment.

In *Federal Trade Commission vs. Gratz*, 253 U. S. 421, on this point Mr. Justice McReynolds said:

> "It is for the Courts, not the Commission, ultimately to determine as a matter of law what they include."

> "The act certainly was never intended to fetter free and fair competition as commonly understood and practiced by honorable opponents in trade, * * *. If real competition is to continue, the right of the individual to exercise reasonable discretion in respect of his own business methods must be preserved. *U. S. vs. Colgate*, 250 U. S. 300; *U. S. vs. Schraders Sons, Inc.*, 252 U. S. 85."

A generic name, or a name merely descriptive of an article of trade, of its qualities or ingredients or characteristics cannot be employed as a trade mark or trade name and the exclusive use of it be entitled to legal protection.

In *Delaware & H. Canal Co. vs. Clark*, 13 Wallace, 311, the plaintiff adopted the name Lackawanna Coal as a name for its product and had used this name for

a long time, and it was charged that the defendant had invaded its rights when the defendant too used this name for his coal. Mr. Justice Strong in an able opinion said:

> "There are two rules which are not to be overlooked. No one can claim protection for the exclusive use of a trade mark or trade name which would practically give him a monopoly in the sale of any goods other than those produced or made by himself. If he could the public would be injured rather than be protected, for competition would be destroyed. Nor can a generic name, or a name merely descriptive of an article of trade, of its qualities or ingredients or characteristics be employed as a trade mark and the exclusive use of it be entitled to legal protection." * * * If the plaintiff's sales are diminished it is because they are not the only producers of Lackawanna Coal, and not because of any fraud of defendant."

This principle is reiterated in the *Goodyear case,* 128 U. S. 598—involving the use of the name Goodyear Rubber; the Court said:

> "Names which are descriptive of a class of *goods* cannot be exclusively appropriated by anyone." (Italics ours.).
>
> "* * * Parties united to produce and sell wine, or to raise cotton or grain, might well style themselves as *Wine Company, Cotton Company,* or *Grain Company;* they would *in no respect impair the equal rights of others engaged in similar business to use similar designations* for the obvious reason that all persons have a right to deal in such articles and to publish the fact to the world." (Italics ours.)

In *Brown Chemical Co. vs. Myer,* 139 U. S. 54, 35 Law. Ed. 247, a case involving the use of descriptive

words as a trade mark, the Court among other things said:

> "The general proposition is well established that words which are merely descriptive of the character, qualities or composition of an article, *or of the place where it is manufactured or produced* cannot be monopolized as a trade mark." (Italics ours.)

In *Howe Scale Co. vs. Wycoff et al.*, 198 U. S. 120, a suit to enjoin, on the grounds of unfair competition, the use of the name Remington-Sholes Company and the designation, in selling typewriting machines, of "Rem-Sho" and "Remington Sholes Company," and a name of which Remington was a part, and where it appeared that defendant took steps by advertisements and instructions to agents to distinguish their product, as in the case at bar, the Court, among other things said:

> "They did not choose the complainant's name literally, or so closely that those using ordinary discrimination would confuse the identity of the two names * * *. The name 'Remington-Sholes Company' is not identical with or in imitation of 'Remington Standard Typewriter Company' or 'E. Remington & Sons' * * *."
>
> "The use of two distinct surnames clearly differentiated the machine of the defendant from those of complainant, and when defendant's cards, signs, catalogues, instructions to agents, etc., are considered, it seems to us that the record discloses, to use the language of Mr. Justice Fields in the *Goodyear case*, a persistent effort on defendant's part to call the attention of the public to its own manufactured goods and the places where they are to be had, and that it has no connection with the plaintiff:

"Having the right to that use, Courts will not interfere where the only confusion, if any, results from a similarity of names and not from the manner of use. The *essence of the wrong in unfair competition consists of the sale of goods of one manufacturer or vendor for those of another, and if defendant so conducts its business as not to palm off its goods for those of another, the action fails.*" (Italics ours.)

In the case here the words "Shade Shop" are used, by respondent, in such manner, we submit, that there is no room or excuse for confusion on the part of the public. In the case here, as in the case cited, instructions have been given to the agents and employees of respondent and the evidence is that the instructions have been carried out to the letter.

Standard Paint Co. vs. Trinidad Asphalt Manufacturing Co., 220 U. S. 452, a suit seeking to enjoin the use of the name Rubbero by the manufacturer of a product known as Rubberoid, the Court, after pointing out that both of these words were descriptive and therefore not susceptible of adoption as a valid trade mark, and although put up in rolls of a similar size and stamped with similar labels, said:

"To preclude its use because of such resemblance would be to give the word 'Rubberoid' the full effect of a trade mark while denying its validity as such."

Other cases on the points involved here are:

Waterman vs. Waterman, 235 U. S. 88,
Elgin Watch Co. vs. Illinois Watch Co., 179 U. S. 664,
Bender vs. Enterprize Mfg. Co., 176 Fed. 641,

Deering Harvester Case, 91 Fed. 376,
Ball vs. Seigel, 116 Illinois 137,
Eggers vs. Hink, 63 California 445,
Popham vs. Cole, 66 N. Y. 669.

The modern authorities have never attempted to do more than to require the defendant to distinguish his place where possible confusion or real confusion exists.

POINT NO. 6

Commission's Authorities Analized and Discussed

An examination of the cases cited by the Commission in support of its contentions will disclose that nearly all of them are *trade mark* or *label cases*, decided primarily upon the theory that the trade mark or labels placed upon the goods were so similar in character as to confuse the purchasing public into purchasing the goods of one manufacturer in the belief that he was purchasing another's, and what are known as, "palming off" cases.

It should be borne in mind that there is no claim here made that the respondent labels or stamps his goods, "Shade Shop" or otherwise.

Such cases as *Shaver vs. Heller, Elgin Watch Company vs. Illinois Watch Company*, the case of *Trappey vs. McIlhenney*, and many others relied upon by the Commission are strictly trade mark or label cases.

It is argured that the respondent did not sufficiently distinguish his place of business from that of "The Shade Shop."

A reference to photographs showing respondent's place of business (R. P. 400, 426, 374-2, 374-3) will dis-

close that if the trading public used any degree of intelligence and used their faculties of observation, confusion could not have resulted in mistaking the place of respondent for that of the establishment of Sammons.

There is no evidence in the record from which it can even be inferred that respondent had anything to do with the position his listing in the telephone directory occupied just above Sammons, it being merely a matter of policy of the telephone company in resorting to an alphabetical listing. The Commission refers (Brief p. 56) to the listing in a telephone directory (Exhibit 11, p. 369) in an attempt to show bad faith on the part of respondent and his intent to deceive the public. Listings prior to that time were carried in accordance with Exhibits 12 and 13 (pp. 369) and the telephone company's representative Hunt testified (pp. 56) that the Word Hooper and Klessner were dropped from the listing under main 4763, and the words "the, S. S. Sammons, Window Shades" were dropped from the listing under Main 4874, as a result of a business policy of the telephone company to "eliminate a lot of matter which according to the best of their observation was non-essential and space consuming," and not at the request or instance of respondent. Much importance is attached to certain excerpts from the testimony of respondent (Comm B. P. 54) in an attempt to show the intent to deceive. We respectfully contend that the whole of respondent's testimony will disclose that it is unfair to draw such a conclusion as the Commission would have you draw from the excerpts quoted.

At page 37 of Commission's brief, reference is made to certain debates and committee reports in

support of arguments as to the intention of Congress. While we do not consider the language of the Act is ambiguous, or calls for resort to such, a reference to them will clearly establish that the protection of the public is the primary purpose of the Act.

Senator Cummins is quoted as having said:

> "The unfairness must be tinctured with unfairness *to the public; not merely with unfairness to the rival or competitor;*" and that *"we are not simply trying to protect one man against another;* we are trying to protect the people of the United States." (Italics ours.)

And the Senator is further quoted as saying:

> "We are trying to protect the people of the United States, and, of course there must be in the imposture or in the vicious practice or method something that has a tendency to affect the people of the country or be injurious to their welfare (Cong. Rec. 63rd Cong. 2nd Sess. p. 11105).

From the foregoing it is clear that the Committee, having in charge the Federal Trade Commission Act, evidenced no intention on its part to interfere with the business conduct of two individuals, when that conduct does not injuriously affect the public interest.

It is contended under point IX (Com. Brief p. 43) "that the question whether a proceeding by the Commission would be to the interest to the public is an administrative one to be determined by the Commission before the institution of the proceeding and is not thereafter a subject of controversy, either before the Commission or in the court."

In the light of the language used by this court in

Federal Trade Commission vs. Eastman Kodak Company, 274 U. S. 619, 71 L. Ed. 1238; *Federal Trade Commission vs. Sinclair Refining Company*, 261 U. S. 463, 67 L. Ed. 746, this contention is most astounding, as it seems too clear to admit of any contention that the court is authorized to review every action of the Commission and to take such action thereon as it finds proper. Of course it must find by its preliminary investigation that the public interest is affected and must have reasonable belief that unfair methods of competition are being employed before the proceeding can be instituted, but after the proceeding is instituted and concluded, if it should appear to the Commission that the primary determination was wrong, then it would be its duty to dismiss the complaint, and failing to do so it is the court's duty, on the review of the whole case, to set aside any order that might be made against the respondent. Certainly the Commission can not irrevocably determine, in advance of the hearing, that unfair methods of competition are being employed, and adversely affect public interest, and despite failure of proof of these things, still adhere to the so called "administrative determination."

CONCLUSION

It is respectfully submitted, (1) that the findings of fact as made by the Commission are not predicated upon a fair interpretation or preponderance of the evidence; (2) that the record does not disclose evidence of an attempt to deceive and defraud the public, or to palm off respondent's goods for those of another; (3) that the words "Shade Shop" are not the subject of exclusive appropriation; (4) that the manner in which

respondent uses these words accompanied with his name does not constitute unfair methods of competition and will to the prudent observer not cause deception or confusion; (5) that the order to cease and desist by the Commission is not appropriate under the findings (6) that the relief sought here cannot be granted on the complaint of the Commission, the findings of fact and the order entered by the Commission, and (7) that the judgment and decree of the court below should be affirmed.

If the contention of the Federal Trade Commission in this case is to be sustained then the very purpose for which the Commission was instituted will fail and its function will be to stifle competition rather than to encourage it; the decisions of the Supreme Court wherein competition is encouraged and upheld will be for naught and within a comparatively short time we will see and have but one shop dealing in any one commodity throughout our broad and great country. For to sustain the contention of the Commission in this case will enable one to adopt a strictly descriptive word coupled with the word shop and entitle the first user thereof to the appropriation to the exclusion of all others. Such contention we cannot believe this Court will sustain. Where could we hope to draw the line—what would be the limitation?

Respectfully submitted,

CLARENCE R. AHALT,
Attorney for Respondent.

SUPREME COURT OF THE UNITED STATES.

No. 8.—October Term, 1929.

Federal Trade Commission, Petitioner, *vs.* Alfred Klesner. } On Certiorari to the Court of Appeals of the District of Columbia.

[October 14, 1929.]

Mr. Justice Brandeis delivered the opinion of the Court.

This case is here on certiorari, for the second time. It was brought in the Court of Appeals of the District of Columbia by the Federal Trade Commission under § 5 of the Act of September 26, 1914, c. 311, 38 Stat. 717, 719, to enforce an order entered by it. The order directs Klesner, an interior decorator, who does business in Washington under the name of Hooper & Klesner, to "cease and desist from using the words 'Shade Shop' standing alone or in conjunction with other words as an identification of the business conducted by him, in any manner of advertisement, signs, stationery, telephone, or business directories, trade lists or otherwise." That court dismissed the suit on the ground that, unlike United States circuit courts of appeals, it lacked jurisdiction to enforce orders of the Federal Trade Commission. 6 F. (2d) 701. On the first certiorari, we reversed the decree and directed that the cause be remanded for further proceedings. *Federal Trade Commission* v. *Klesner*, 274 U. S. 145. Then the case was reargued before the Court of Appeals, on the pleadings and a transcript of the record before the Commission; and was dismissed on the merits, with costs. 25 F. (2d) 524. This second writ of certiorari was thereupon granted. 278 U. S. 591. We are of opinion that the decree of the Court of Appeals should be affirmed—not on the merits, but upon the ground that the filing of the complaint before the Commission was not in the public interest.

The conduct which the Commission held to be an unfair method of competition practiced within the District had been persisted in by Klesner ever since December, 1915. The complaint before the Commission was filed on December 18, 1920. The order

sought to be enforced was entered June 23, 1922. This suit was begun on May 13, 1924. The evidence before the Commission, which occupies 394 pages of the printed record in this Court, is conflicting only to a small extent. The findings of the Commission are in substance as follows:

Sammons has for many years done business in Washington as maker and seller of window shades, under the name of "The Shade Shop". Prior to 1914, that name had, by long use, come to signify to the buying public of the District the business of Sammons. The concern known as Hooper & Klesner has also been in business in Washington for many years. Prior to 1915, its trade had consisted mainly of painting and of selling and hanging wall-paper. It had dealt also, to some extent, in window shades, taking orders which it had executed either by Sammons or some other maker of window shades. In 1914, Hooper & Klesner leased a new store pursuant to an arrangement with Sammons, and sub-let to him a part of it. There Sammons continued his business of making and selling window shades as an independent concern under the name of "The Shade Shop." His gross sales there were at the rate of $60,000 a year. On a Sunday in November, 1915, he removed all his effects from those premises and established his business in another building four doors away.

Sammon's removal was in confessed violation of his agreement with Hooper & Klesner. An acrimonious controversy ensued. Threats of personal violence led to Sammon's having Klesner arrested; and this to bitter animosity. Out of spite to Sammons, and with the purpose and intent of injuring him and getting his trade, Hooper & Klesner decided to conduct on its own account, in the premises which Sammons had vacated, the business of making and selling window shades. It placed upon its show windows, and also upon its letterheads and billheads, the words "Shade Shop"; and listed its business in the local telephone directory as "Shade Shop, Hooper & Klesner" and as "Shade Shop." A like sign was placed on its delivery trucks. This use by Hooper & Klesner of the term "Shade Shop" has caused, and is causing, "confusion to the window-shade purchasing public throughout the District;" and, on certain occasions, customers who entered Hooper & Klesner's shop were deceived by employees, being led to believe that it was Sammons'. Meanwhile, Klesner had become the sole owner of the business.

Such were the findings of the Commission. The Court of Appeals concluded that there was no showing either that Klesner was attempting to dispose of his goods under the pretense that they were the goods of Sammons, or that he was attempting to deceive or entice any of Sammons' customers; that the evidence introduced to show deception went no further than that some of the public may have purchased from Klesner under a mistaken belief that they were dealing with Sammons; that the words "Shade Shop" were being used by Klesner always in connection with the words Hooper & Klesner; and that the term "Shade Shop" as used by Klesner, merely indicated that his store was a place where window shades were made and sold. The Court of Appeals ruled that these words, being descriptive of a trade or business, were incapable of exclusive appropriation as a legal trademark or trade name; and that there was nothing in the facts to justify the charge of unfair competition. It, therefore, dismissed the suit on the merits, the ground of decision being that there was a lack of those facts which, in a court of law or of equity, are essential to the granting of relief for alleged acts of unfair competition.

We need not decide whether the Court of Appeals was justified in all of its assumptions of fact or in its conclusions on matters of law. For we are of opinion that the decree should be affirmed on a preliminary ground which made it unnecessary for that court to enquire into the merits. Section 5 of the Federal Trade Commission Act does not provide private persons with an administrative remedy for private wrongs. The formal complaint is brought in the Commission's name; the prosecution is wholly that of the Government; and it bears the entire expense of the prosecution. A person who deems himself aggrieved by the use of an unfair method of competition is not given the right to institute before the Commission a complaint against the alleged wrongdoer. Nor may the Commission authorize him to do so. He may of course bring the matter to the Commission's attention and request it to file a complaint.[1] But a denial of his request is final. And

[1]The rules of practice adopted by the Commission require that the application be in writing and "contain a short and simple statement of the facts constituting the alleged violation of law and the name and address of the applicant and of the party complained of." Rules of Practice, No. II. See Annual Report of the Federal Trade Commission for 1928, pp. 17, 18, 41, 42; and Exhibit 5, p. 132. As to changes made in the procedure and policy March 17, 1925 and September 17, 1928, see *Id.*, Exhibit 1, pp. 117-119.

if the request is granted and a proceeding is instituted, he does not become a party to it or have any control over it.[2]

The provisions in the Federal Trade Commission Act concerning unfair competition are often compared with those of the Interstate Commerce Act dealing with unjust discrimination. But in their bearing upon private rights, they are wholly dissimilar. The latter Act imposes upon the carrier many duties; and it creates in the individual corresponding rights. For the violation of the private right it affords a private administrative remedy. It empowers any interested person deeming himself aggrieved to file, as of right, a complaint before the Interstate Commerce Commission; and it requires the carrier to make answer. Moreover, the complainant there, as in civil judicial proceedings, bears the expense of prosecuting his claim.[3] The Federal Trade Commission Act contains no such features.

While the Federal Trade Commission exercises under § 5 the functions of both prosecutor and judge, the scope of its authority is strictly limited. A complaint may be filed only "if it shall appear to the Commission that a proceeding by it in respect thereof would be to the interest of the public." This requirement is not satisfied by proof that there has been misapprehension and confusion on

[2]The sole privilege conferred upon private persons is contained in the following provision of § 5: "Any person, partnership, or corporation may make application, and upon good cause shown may be allowed by the Commission to intervene and appear in said proceeding by counsel or in person." 38 Stat. 719.

[3]Prior to the Act of June 18, 1910, c. 309, § 11, 36 Stat. 539, 550, which in terms conferred upon the Interstate Commerce Commission power to issue orders in proceedings initiated by it, orders were, with a few exceptions, entered only on complaints filed by shippers or others. Even after the Act of June 29, 1906, c. 3591, 34 Stat. 584, it was asserted that the Commission was without power to enter orders in proceedings initiated by it. Report of the House Committee on Interstate and Foreign Commerce, April 1, 1910, 61st Cong., 2d Sess., No. 923, pp. 3, 10; 45 Cong. Rec., Appendix, p. 88. Compare In the Matter of Allowances for Transfer of Sugar, 14 I. C. C. 619, 627. It had been stated earlier (Interstate Commerce Com. v. Detroit, etc. Ry., 57 Fed. 1005, 1008) that the power existed; and its existence was assumed in Interstate Commerce Com. v. Northern Pacific Ry. Co., 216 U. S. 538, 542.

Both the United States Shipping Board Act of September 7, 1916, c. 451, § 22, 39 Stat. 728, 736 and the Packers and Stockyards Act of August 15, 1921, c. 64, §§ 308, 309, 42 Stat. 159, 165, confer upon private individuals the right to institute proceedings and upon the administrative tribunal the power to award reparations.

the part of purchasers, or even that they have been deceived,—the evidence commonly adduced by the plaintiff in "passing off" cases in order to establish the alleged private wrong. It is true that in suits by private traders to enjoin unfair competition by "passing off," proof that the public is deceived is an essential element of the cause of action. This proof is necessary only because otherwise the plaintiff has not suffered an injury. There, protection of the public is an incident of the enforcement of a private right.[4] But to justify the Commission in filing a complaint under § 5, the purpose must be protection of the public.[5] The protection thereby afforded to private persons is the incident. Public interest may exist although the practice deemed unfair does not violate any private right. In *Federal Trade Commission* v. *Beech-nut Packing Co.*, 257 U. S. 441, a practice was suppressed as being against public policy, although no private right either of a trader or of a purchaser appears to have been invaded. In *Federal Trade Commission* v. *Winsted Hosiery Co.*, 258 U. S. 483, an unfair practice was suppressed because it affected injuriously a substantial part of the purchasing public, although the method employed did not involve invasion of the private right of any trader competed against.

In determining whether a proposed proceeding will be in the public interest the Commission exercises a broad discretion. But the mere fact that it is to the interest of the community that private rights shall be respected is not enough to support a finding of public interest. To justify filing a complaint the public interest must be specific and substantial. Often it is so, because the unfair method employed threatens the existence of present or potential competition. Sometimes, because the unfair method is being employed under circumstances which involve flagrant oppression of the weak by the strong. Sometimes, because, although the aggregate of the loss entailed may be so serious and widespread as to make the matter one of public consequence, no private suit would be

[4]See American Washboard Co. v. Saginaw Mfg. Co., 103 Fed. 281, 284-285; Borden Ice Cream Co. v. Borden's Condensed Milk Co., 201 Fed. 510, 513; Rosenberg Bros. & Co. v. Elliott, 7 F. (2d) 962, 965; Nims, Unfair Competition (Third edition) pp. 27-36.

[5]See Royal Baking Powder Co. v. Federal Trade Commission, 281 Fed. 744, 752; Federal Trade Commission v. Balme, 23 F. (2d) 615, 620; Indiana Quartered Oak Co. v. Federal Trade Commission, 26 F. (2d) 340, 342.

brought to stop the unfair conduct, since the loss to each of the individuals affected is too small to warrant it.[6]

The alleged unfair competition here complained of arose out of a controversy essentially private in its nature. The practice was persisted in largely out of hatred and malice engendered by Sammons' act. It is not claimed that the article supplied by Klesner was inferior to that of Sammons, or that the public suffered otherwise financially by Klesner's use of the words "Shade Shop." It is significant that the complaint before the Commission was not filed until after the dismissal, in 1920, of a suit which had been brought by Sammons in 1915, in the Supreme Court of the District, to enjoin Klesner's use of the words "Shade Shop."[7] When the Commission directed the filing of the complaint Hooper & Klesner had been using those words in its business for five years. They had been used for nearly seven years before the order here in question was made; and for nearly nine years before this suit to enforce it was begun. Whatever confusion had originally resulted from Klesner's use of the words must have been largely dissipated before the Commission first took action. If members of the public were in 1920, or later, seriously interested in the matter, it must have been because they had become partisans in the private controversy between Sammons and Klesner.

The order here sought to be enforced was entered upon a complaint which had in terms been authorized by a resolution of the Commission. The resolution declared, in an appropriate form, both that the Commission had reason to believe that Klesner was violating § 5, and that it appeared to the Commission that a pro-

[6]Compare Federal Trade Commission v. Beech-Nut Co., 257 U. S. 441; Federal Trade Commission v. Pacific Paper Assn., 273 U. S. 52; Wholesale Grocers' Ass'n v. Federal Trade Commission, 277 Fed. 657; Southern Hardware Jobbers' Ass'n v. Federal Trade Commission, 290 Fed. 773; Oppenheim, Oberndorf & Co., Inc. v. Federal Trade Commission, 5 F. (2d) 574; Toledo Pipe-Threading Mach. Co. v. Federal Trade Commission, 11 F. (2d) 337; Cream of Wheat Co. v. Federal Trade Commission, 14 F. (2d) 40; Arkansas Wholesale Grocers' Ass'n v. Federal Trade Commission, 18 F. (2d) 866; Keith Co. v. Federal Trade Commission, 23 F. (2d) 41.

[7]The original rule to show cause issued in the action was dismissed by the Supreme Court of the District on the 23rd day of December, 1915, "upon consideration of the Bill of Complaint, the exhibits thereto, and the rule to show cause issued thereon, and the answer and exhibits to said rule, as well as the arguments of counsel thereon". No further proceedings were had in the action until its final dismissal on May 24, 1920.

ceeding by it in respect thereof would be to the interest of the public. Thus, the resolution was sufficient to confer upon the Commission jurisdiction of the complaint. Section 5 makes the Commission's finding of facts conclusive, if supported by evidence. Its preliminary determination that institution of a proceeding will be in the public interest, while not strictly within the scope of that provision, will ordinarily be accepted by the courts. But the Commission's action in authorizing the filing of a complaint, like its action in making an order thereon, is subject to judicial review. The specific facts established may show, as a matter of law, that the proceeding which it authorized is not in the public interest, within the meaning of the Act. If this appears at any time during the course of the proceeding before it, the Commission should dismiss the complaint. If, instead, the Commission enters an order, and later brings suit to enforce it, the court should, without enquiry into the merits, dismiss the suit.

The undisputed facts, established before the Commission, at the hearings on the complaint, showed affirmatively the private character of the controversy. It then became clear (if it was not so earlier) that the proceeding was not one in the interest of the public; and that the resolution authorizing the complaint had been improvidently entered. Compare *Gerard C. Henderson, The Federal Trade Commission*, pp. 52-54, 174, 228-229, 337. It is on this ground that the judgment dismissing the suit is

Affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.